UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 15 Cr. 769 (AJN)

YURI LEBEDEV and TREVON GROSS,

Defendants. Jury Trial

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New York, N.Y.
March 10, 2017
9:03 A.M.

Before:

HON. ALISON J. NATHAN,

District Judge
And A Jury

APPEARANCES

PREET BHARARA
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Southern District of New York
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BY: KRISTEN M. SANTILLO
BY: HENRY E. KLINGEMAN

(Trial resumed; jury not present)

THE COURT: Good morning everyone. Matters to take up?

MR. KLINGEMAN: Your Honor, I just need about five minutes between now and when the jury is brought in to make sure I can display a single exhibit on the screen. So we're trying to coordinate that but otherwise I'm ready to go; and I've timed myself to stay within the parameters that the Court imposed -- not imposed but strongly recommended yesterday, fifteen to twenty minutes. I timed it out and I'm good to go.

THE COURT: Thank you. Yes. Not imposed. I have -- I don't -- can't really restrict closings in any non-reasonable way and you've certainly been reasonable.

Matters to take up?

Ms. Choi?

MS. CHOI: Your Honor, I think there's one discrepancy with regard to the exhibits that Mr. Chang-Frieden was about to describe to me.

THE COURT: Good.

(Pause)

MS. CHOI: It appears that there is one defense exhibit that has not -- that was inadvertently not admitted but I don't know what the details of that are. Maybe Ms. Madrigal is aware.

MS. MADRIGAL: My understanding is that it's DX-24.

And I believe -- I'm not sure whether Mr. Creizman moved that into evidence or not but I believe that the government moved that into evidence during Mr. Gross's cross.

THE COURT: As a different number?

MS. MADRIGAL: As a government exhibit.

MS. CHOI: I see. There's two versions.

MR. NOBLE: I think Ms. Santillo put it in evidence the first time we put in our version of it.

MS. CHOI: What do you guys want? If it's in --

THE COURT: You could cross-reference it on the exhibit list.

MS. MADRIGAL: I think that would be reasonable.

THE COURT: Do you know what the government exhibit is?

MR. CREIZMAN: I know what it is.

MS. MADRIGAL: We can easily find out by looking at the transcript, your Honor.

MS. CHOI: If you have a hard copy I can search by text or Michael can search by text. I don't know.

Do you know how to do it?

THE COURT: You can go off the record.

(Discussion off the record)

MS. CHOI: There is a version of this but it's slightly different. The version that the government admitted --

THE COURT: And the "this" is?

MS. CHOI: DX-24.

The version the government admitted is I believe 120-A. And as is the case in many of these exhibits there are chains of e-mails. So the bottom two e-mails which is, to describe it, it's an e-mail chain on September 15. The first e-mail is an advertisement for this virtual currency BSA/AML compliance conference or training. And then that gets forwarded by Trevon Gross to Yuri Lebedev and Jose Freundt and Anthony Murgio.

So those two bottom e-mails are reflected in the government exhibit. The issue is at the top e-mail chain. The version the defense -- in the defense exhibit includes a response from Anthony Murgio and the version that the government has admitted I believe is a version in which that -- the lower two e-mails are simply forwarded to Unit Test. So the defense's exhibit, the two lines of Anthony Murgio's statement back are not actually in evidence.

So I mean I don't know what the solution should be then.

THE COURT: Are you relying on it for that top e-mail, Ms. Madrigal.

MS. MADRIGAL: I know we were supposed to abide by your one-lawyer rule.

THE COURT: Mr. Creizman is here now.

MR. CREIZMAN: Yes. I was the one who entered, who entered it. Obviously, I didn't realize -- I thought that it had been admitted into evidence because it had a Defendant's Exhibit sticker on it. So I'm -- I don't think -- just in terms of -- just as a rule could we -- we could either make it the government exhibit -- no one saw the defendant's exhibit, right?

MS. CHOI: Right.

MR. CREIZMAN: So could we make -- it's either the government exhibit could be the one with the top e-mail. It doesn't really matter.

MS. CHOI: You don't care about the top e-mail?

MR. CREIZMAN: I don't. But I did read from it. I'm pretty sure I read from it in closing. Yeah.

MS. CHOI: You read from the top e-mail.

MR. CREIZMAN: I did. I read the whole -- I read the whole thing. I mean I don't know.

MS. CHOI: Your Honor, this, I mean --

MR. CREIZMAN: All the e-mails -- right.

MS. CHOI: The government has no problem -- I mean the only issue is, is that obviously we're in a procedural situation which I've not been in before. But we don't have any problem with somehow reopening for the purpose of just getting this exhibit in because it's one that we have no objection to. At this point, if Mr. Creizman had already relied on it in

closing, although obviously under other circumstances there may be issue with that, we don't have issue with that fact.

So I don't -- as a pragmatic matter, I think maybe the easiest thing to do is simply -- it's awkward, but I don't know if there's some way that we can just reopen the case and put this in. Because my concern is he's made reference to a specific defense exhibit by number and the jury goes looking for it and they can't find it and then they go to the government exhibit and he read from the first two lines, I mean it's not going to make sense to them and I'd rather it just be clean.

THE COURT: Did you -- you noted it as DX-24 when you read from it?

MS. CHOI: Why don't we just check.

MR. CREIZMAN: The transcript I never got the transcript last night.

THE COURT: It came through last night.

MR. CREIZMAN: I don't know why.

THE COURT: Let me make a suggestion. That we put it in as DX-24. I'll say to the jury as a housekeeping matter I am reopening the case for the admission of DX-24 which was inadvertently not moved into evidence. Everybody agree with that?

MS. CHOI: Yes, your Honor.

And he did make reference to -- well, hold on.

Yes. He did make reference to the first two lines so I think that's the best way to go.

THE COURT: I thank the government for its flexibility on that one.

MR. CREIZMAN: Thank you.

MS. CHOI: No worries.

THE COURT: So with that included on the -- so Mr. Chang-Frieden will include DX-24 on the list, that separate agreement will be included in the pile. Do we have agreement as to what physically is going in?

MS. CHOI: One moment, your Honor.

(Discussion off the record)

MS. CHOI: So it appears that -- the government has a hard copy of exhibits ready to go. It also has the electronic copy of all of its exhibits and most of the defense exhibits with two or three exceptions which we're going to deal with. So our proposal is it doesn't seem as if defense counsel would like to go through the government hard copies to doublecheck. We would propose sending back the computer with all of the exhibits, both the government and defense exhibits and then hard copies as well so that the jury can choose which versions they would like to look at.

I think the one exception, again, to that would be that -- we could send -- I mean do we have hard copies of the WhatsApp chats?

We can printout hard copies of the WhatsApp chats if that's what they would like. That's the one thing that may require a little instruction if they want to look at them because they have to be open in a particular program, Chrome as the browser and not Internet Explorer, in order for them to be able to be played and integrated the way that they were displayed at trial.

So that's the one issue with regard to the electronic. But, otherwise, I think the parties are in agreement that both are ready, and defense counsel doesn't seem to intend to go through the government hard copies so we can send them back.

THE COURT: So the agreement is the laptop will go back. It will have on it all exhibits, government and defense exhibits.

The government's exhibits can also go back in paper.

MS. CHOI: Yes. And the defense exhibits as well.

THE COURT: So we give them both papers copies and electronic copies.

The only thing that they either need something printed or further instruction are the WhatsApp chats.

MS. CHOI: Correct, your Honor.

THE COURT: What does it take to print them?

MS. CHOI: It doesn't take long.

Again, because I think the agreement was the transcripts go back, but they're aids, they're not actually in

evidence, if they want to look at the underlying evidence is our only concern, but it doesn't take long to print them if your Honor would like as well.

THE COURT: I see you have the audio.

MS. CHOI: The audio, to be clear, because as your Honor may have seen there's that little triangle that sometimes we played, but sometimes we just read from the transcript. And to the extent that the jurors would actually like to hear their voices or whatever else, they can't easily find the audio in the disk versions. They have to use this sort of Chrome situation where if they open it up in one particular browser it will be obvious to them, they can just click play and go.

MR. CREIZMAN: Can I confer with you.

THE COURT: Sure.

(Discussion off the record)

THE COURT: Back on the record.

MS. CHOI: I think we all agree. I think we can just rely on -- we can send back a hard copy too, but I think that we should have the instruction to the jurors about just with regard to the WhatsApp chats. And the instruction simply with regard to the WhatsApp chats which are -- and we can tell you the government exhibits, it's 45 something to something. And we'll look that up in a moment, your Honor.

With regard to the WhatsApp chats, the parties would like to instruct or the government or whomever would like to

instruct the jurors that to access those chats they should open the folder for the exhibit, and then open the HTML file in a Chrome browser. And I know that juror number four or five will be able to figure that out. In the Google Chrome browser.

THE COURT: So what I'll propose is I'll say that I'm sending back a laptop that contains digital -- an electronic version of all admitted government and defense exhibits. I'm also sending back paper copies of all admitted government and defense exhibits. For the WhatsApp chats, to hear the audio, they need to follow an instruction, and I think I'll just ask you, Ms. Choi, to provide that. And I'll tell them that if they have any difficulty with that, then once they select their foreperson they should send a note and I can -- we can either play portions in the courtroom that they want to hear or provide further instructions.

MS. CHOI: That works. Thank you, your Honor.

THE COURT: Everybody agree with that?

MR. CREIZMAN: Yes, your Honor.

MR. KLINGEMAN: Yes, your Honor.

THE COURT: Thank you.

I also just want to get the exhibit list then which sounds like it's complete. Agreed -- everybody look at it and agree on it and I'll mark it as a court exhibit and a copy will go back to the jury unless anyone has any concerns with that.

MS. CHOI: Your Honor I just wanted confirmation that

it's your Honor's practice to only send back numbers and the date that they were admitted. Is that, in fact, the case?

THE COURT: What do you mean?

MS. CHOI: With regard to an exhibit list.

THE COURT: Only admitted exhibits.

MS. CHOI: Correct. Right.

For admitted exhibits, that the exhibit list should contain no descriptors of what the exhibits are.

THE COURT: Correct.

MS. CHOI: So it will literally just be a string of numbers and the date that it was admitted, I believe.

THE COURT: Yes.

MS. CHOI: Okay.

THE COURT: Because I don't want to get into debates about every description.

MS. CHOI: Fair enough. I just wanted to make sure that that was the practice.

THE COURT: So do you have that?

MS. CHOI: Yes, your Honor. I believe that's prepared. The last paralegal is coming over, Ms. Grant is on her way over with those. And those were circulated, I believe, or at least the lists were circulated last night. It would just be stripping out titles.

THE COURT: Including DX-24?

MS. CHOI: Yes. We will include that for sure.

THE COURT: Otherwise everybody agrees to the list?

MS. MADRIGAL: Yes. We have our individual lists.

MR. KLINGEMAN: Yes.

THE COURT: So once I actually see that, I'll mark -- I'll have Ms. Nunez mark it as a court exhibit and then it can go to the jury.

I think everybody has the -- I'll have Mr. Rosen hand out copies of the -- the final copy of the jury charge for you to read along with me and then I have -- I'll send one verdict form back with the jury and I will enter on ECF the final jury instructions that Mr. Rosen is handing out now and the blank verdict form that will all be in the docket.

Anything else? Give Mr. Klingeman his time to set up. Anything else to take up?

MR. SHIN: Your Honor, your Honor mentioned this at the end of the day yesterday that, again, yesterday we have this list of exhibits to come in by stipulation. And I think your Honor mentioned on the record that Ms. Nunez didn't have the list and the court reporter I think should have the list so that the court reporter can enter the actual numbers of all the exhibits that are contained on the list.

THE COURT: Right.

MR. SHIN: So we have that and we can hand that to the court reporter for use of entering the exhibit numbers into the record as well.

THE COURT: Okay. Thank you.

(Government's Exhibits 10,001; 1000s: amurginc@gmail.com Emails, 1015, 1017, 1063, 1065-C, 1194-A, 1194-B, 1194-C, 1194-D, 1195, 1202-A, 1202-B, 1204-A, 1204-B, 1209, 1214, 1216-A, 1216-B, 1218-A, 1219, 1222, 1224-E, 1228, 1231-B, 1232, 1233, 1235, 1238, 1241, 1242-A, 1242-C, 1242-D, 1242-E, 1243, 1248-B, 1248-C, 1255, 1257-A, 1257-B, 1259-C, 1259-D, 1260-A, 1266-A, 1266-B, 1275, 1291, 1316-A, 1316-B, 1317-B, 1317-E, 1317-F, 1317-H, 1321, 1324-D, 1327-A, 1327-A-Link, 1327-E, 1329, 1331-B, 1331-C, 1343-D, 1347-A, 1347-B, 1351-B, 1356-A, 1356-B, 1358, 1359, 1367-F, 1370, 1389-B, 1404, 1407-A, 1407-C, 1410, 1411, 1412-A, 1415, 1432-D, 1440-F, 1442-B, 1482-A, 1482-B, 1482-C, 1483-A, 1483-B, 1483-C, 1483-F, 1483-H, 1483-J, 1483-L, 1483-T, 1488, 1489-B, 1491-B, 1495, 1521, 1522-A, 1531, 1533-A, 1551, 1552, 1553, 1554, 1556, 1557, 1558, 1560, 1561, 1562, 1575, 1583, 1586-A, 1586-B, 1586-C, 1586-D, 1586-E, 1587, 1588-A, 1588-B, 1588-C, 1611-A, 1611-B, 1613, 1614, 1615, 1616-A, 1616-B, 1616-C, 1616-D, 1616-E, 1617, 1618-A, 1618-B, 1618-C, 1621, 1623-A, 1646-1668: trevongross@me.com Emails, 1652-1, 1652-1-A, 1652-2, 1652-3, 1666, 1786-1817: jmfreundt@hotmail.com Emails, 1793, 1860-2049: Ylebedev@gmail.com Emails, 1912, 1913, 1933, 1938, 1939, 1940, 1947-A, 1947-B, 1949, 1950, 1958, 1959, 1962, 1970, 1972, 1995, 2016, 2019, 2020, 2021, 2022, 2024, 2027, 2029, 2047-1, 2050-2120: Ylebedev@hope-fcu.com Emails, 2061, 2073, 2089,

2104, 2108, 2109, 2110, 2143-2254: rhill@hope-fcu.com Emails, 2145, 2146, 2148, 2157, 2161, 2163, 2165, 2167, 2173, 2178-B, 2178-C, 2178-D, 2184, 2198, 2201, 2203, 2206, 2208, 2212-A, 2212-B, 2218, 2230-A, 2230-B, 2232, 2234, 2236, 2236-1A, 2236-1C, 2238, 2244, 3000: HOPE FCU Documents, 3000, 3500s: Kapcharge Documents, 3504, 3506, 3511, 3512, 3513, 3516, 3522, 3523, 3524-A, 3524-B, 3524-C, 3524-D, 3528, 3529-A, 3529-B, 3534, 3537, 3538, 3539-A & 3539-B, 3541, 3543, 3544, 3573-A, 3573-B, 3575-A, 3575-B, 3576-A, 3580, 3583-D, 3587-A, 3587-B, 3588, 3611, 3613, 3520, 3690, 3701, 3704, 3705, 3708, 3568-A, 3719, 3721, 3725, 3740, 4000s: Stipulations, 4015, 5000-5180: Anthony Murgio's Computer, 5002, 5003, 5007, 5009, 5011, 5017, 5041, 5069, 5083, 5095, 5102, 5102-Link, 5115, 5127, 5139, 5148, 5149, 5152, 5153, 5154, 5155, 5156, 5157, 5158, 5159, 5160 received in evidence)

THE COURT: One last point and then I'll step down until we get our jurors. Just in case this rearises, I don't want to have to do a sidebar.

There was an objection during Mr. Klingeman's closing which I did overrule and I can -- I believe I know what the objection was. It was when Mr. Klingeman asked if the government hasn't proved beyond a reasonable doubt that Mr. Gross lined his pockets, then you have to acquit. And you objected, which I presume was in light of the instruction on accepting corrupt payments and the specific instruction that

the government does not have to prove that Mr. Gross received the payments directly if he corruptly solicited, demanded, accepted or agreed to accept a payment on behalf of another person or entity with the intent to be influenced or rewarded that is sufficient to find him guilty. Is that the basis for the objection?

MR. NOBLE: Judge, it's funny. I don't think I actually objected to that. I was going to. But I had previously objected to Mr. Klingeman's description of the burden of proof as proving beyond no doubt as opposed to a reasonable doubt. And I objected and you overruled my objection. So kind of as a strategic matter I did not object to his misstatement of the law with respect to the burden of proving corrupt intent. I would have because I think it was incorrect.

THE COURT: So the reason I overruled it in the context in which it was being given was it was in the context of good faith. And I was interpreting the implication in what Mr. Klingeman was arguing is to remind the jury that it is still the government's burden with respect to good faith. But, and then I -- there was a later -- so I did misinterpret your objection and nevertheless overruled you and there was a later moment where it reemerged. And I didn't know and the government didn't object and I wasn't sure. Basically, I'm comfortable with my ruling yesterday and I just want to make

sure that this is not -- if this is something we need to flesh out for the remainder of Mr. Klingeman's closing?

MR. KLINGEMAN: Your Honor, I don't recall saying you must find there is no doubt. I'm obviously aware of the standard since I quoted the jury instruction. And I'd like to be shown in the transcript where I said no doubt because I'm confident I didn't say it.

MR. NOBLE: I may have misspoken. I think you said some doubt as opposed to reasonable doubt.

It's on --

THE COURT: 4062.

MR. NOBLE: It's line 11.

THE COURT: Do you have some doubt about that? So this is in the context of --

MS. CHOI: Lining his own pockets.

THE COURT: Right. It's in the context of good faith. "Pastor Gross was lining his own pockets. We're going to talk in a few minutes about the financial information. But ask yourself: Have you been convinced beyond a reasonable doubt that Pastor Gross accepted this donation to the church so he could line his own pockets? Maybe I can ask the question in a more appropriate way: Do you have some doubt about that? Because if you do, you must acquit him." And that's where the objection was.

MR. NOBLE: Right. My reasoning was I don't think

it's correct to say that if they have some doubt that they should acquit or they must acquit because it's reasonable doubt. And it's further incorrect because he doesn't have to have lined his own pockets with the bribe money in order to be convicted. The money could have gone to the church for any number of reasons and he could still be convicted.

So I think Mr. Klingeman is misstating the law to the jury. That was the basis for my objection. And I'm not -- I don't think we're seeking any kind of instruction, your Honor, but we would like to make sure that he doesn't mislead the jury through legal argument to them by misstating the law.

MR. KLINGEMAN: I haven't misstated the law and I'm responding directly to the government's argument that, in the government's own words, Mr. Gross "lined his own pockets."

And the court will instruct the jury on the precise law. But I need to meet the government's argument.

THE COURT: There are ways of meeting the government's argument without contradicting the jury charge and I don't need to do a correction but you'll bear in mind the -- it is true, is it not, that the government does not need to prove beyond a reasonable doubt that Mr. Gross lined his own pockets in order to acquit. That is what they've attempted to show. But it is, I think, that version of it is not a correct statement of the law. Do you agree with that?

MR. KLINGEMAN: I don't disagree that the law does not

require the government to prove specifically that Mr. Gross lined his own pockets. What I do believe is that the government has indicted the case and prosecuted the case to -- in an attempt to establish corrupt intent by demonstrating that Mr. Gross lined his own pockets; in other words, that's the specific evidence that the government has pointed to to establish corrupt intent among other things. And that's why I believe I'm permitted to respond to it in that context. But in no way do I want to suggest to the jury that the government -- well, I agree with the Court.

THE COURT: You're certainly -- absolutely permitted to respond so long as it doesn't move over into a misstatement of what is necessary.

I think we have clarity. I think -- I don't think -- I think Mr. Klingeman will be cautious of not overstating the government's heavy burden. But it's obviously appropriate to remind at any point the jury of that standard and I don't -- I think it sounds like we're clear on not crossing the line with respect to what will be my legal instruction as to how to prove accepting a bribe payment.

MR. NOBLE: Yes, Judge.

THE COURT: Thank you.

I'll step down. I think we're missing one juror, and Mr. Klingeman needs to get a document up, so I'll step down for a moment.

(Recess)

THE COURT: Please be seated. We have all our jurors.

Mr. Klingeman, did you have a chance to set up what you needed to?

MR. KLINGEMAN: Ready to go, your Honor.

THE COURT: All right. Let's bring in our jurors.

Are you squarely in front of the microphone, Mr. Klingeman?

MR. KLINGEMAN: I am, your Honor. I was told that a few people in the back couldn't hear me so I'm going to do my best to speak up this morning.

THE COURT: Thank you.

MR. KLINGEMAN: I just hope the people in front of me heard me.

THE COURT: You started out a little soft because the mic was far away but it did get better.

MR. KLINGEMAN: Thank you.

THE COURT: Mr. Noble, you've kept it short, right?

MR. NOBLE: Well I believe I'd asked for 40 minutes, 20 for each defendant which is typical. So I'm going to try to keep it within 40; maybe shorter if I talk fast.

Depending on what else Mr. Klingeman has to say.

(Continued on next page)

(Jury present)

THE COURT: Good morning. Thank you so much, ladies and gentlemen of the jury.

Mr. Klingeman, you may return to the podium for the remaining of the closing on behalf of Mr. Gross.

MR. KLINGEMAN: Good morning, ladies and gentlemen.

When I concluded yesterday afternoon we had just finished talking about the allegations in the indictment that Pastor Gross obstructed an NCUA investigation and made false statements to the NCUA. And as I noted the government recited for you in its closing argument and then throughout the trial, by my count, seven so-called lies that Pastor Gross participated in telling that both constitute an obstruction of an investigation as well as false statements in and of themselves. And most of them, as you heard throughout the trial, have been addressed by us not as lies but, in fact, as truthful statements, in many cases; mistaken statements in other cases; immaterial statements in yet another way. And, therefore, in no way, shape, or form deliberate efforts to obstruct or lie to the NCUA.

But, as with so many aspects of this case, I don't want you to form a false impression of the evidence based on something you're hearing out of context.

Let me talk about the very last so-called lie that the government cited yesterday in its closing argument.

You heard lie number six. Lie number six, net worth ratio. And there are 31 slides of government exhibits and testimony and argument that the government would have you consider now to determine that Pastor Gross lied about net worth ratio and obstructed a NCUA examination by lying about the net worth ratio.

Let's be clear. I don't know who can recall or recite this net worth argument because you only heard it for the first time yesterday. And what do I mean by that?

The net worth ratio is an accounting issue that a financial institution, a bank, a credit union, needs to address and place in the call report, which is the report that goes from the credit union to the NCUA. And, obviously, if it's deliberately falsified it can constitute a lie and it can constitute an obstruction. And, therefore, it can't be falsified, at least not deliberately.

So the government is suggesting that -- to use the government's phrase -- that Mr. Gross was cooking the books. They said this is a classic example of cooking the books. And then they cited a $619,000 check from Kapcharge that was used to purportedly manipulate the net worth ratio, lead to the falsification of the call report and thus lead to an obstruction of a NCUA examination and a lie to the NCUA. That's the argument as it was presented yesterday.

But this is the very first mention in the trial in any

significant way of this issue. There were no witnesses called about this issue. There was no effort to explain this issue during the course of the trial. Pastor Gross wasn't confronted about this when he testified and wasn't given an opportunity to explain.

But, be that as it may, what the government did do is call no less than four -- four examiners at various supervisory levels from the NCUA, and not a single one of them indicated that this was a false statement or that the call report was false or that the NCUA was misled in this regard. This is something the government has presented to you, the prosecutor has presented to you at the end of the case in the hopes that somehow it will make up for the utter lack of evidence that Pastor Gross acted with corrupt intent, that he deliberately deceived the NCUA and that he deliberately obstructed their investigation.

So, again, as with so many issues in the case, so many technical financial complex issues in the case there are two sides to this story. And remember what I said to you yesterday. In other words, if there are two sides to this story, two reasonable sides, or at least a reasonable argument from the defense, a reasonable explanation from Pastor Gross, then you must acquit him because that's the very essence of reasonable doubt; two reasonable sides to a story.

The government can make an argument. They can make it

forcefully. They can make it eloquently, but that doesn't make it the truth. And that doesn't make it the only argument.

And if Pastor Gross or the witnesses as we've questioned them have given you a reason to think otherwise, as long as it's reasonable, as long as it's plausible, as long as it's credible, you must acquit him. That's how the system works. That's how this jury trial functions.

So, please keep that in mind as you review all of these disagreements about what the false statements might be, what the obstructive conduct might be, or whether it was entirely made and done in good faith.

When her Honor instructs you on the law later today, one of the instructions she's going to give you is about the defendant's character. And I'm speaking here about Pastor Gross naturally, but the instruction applies with equal force to Mr. Lebedev and the things you've heard about him, the positive things you've heard about him throughout the trial including some of the positive things that Pastor Gross said about them in their very limited interactions. But my focus on the comments is on the character of Pastor Gross.

I haven't had much to say about his testimony, both his direct testimony and his testimony on cross-examination. And the reason I haven't had much to say is because it stands on its own. I am not going to sit here and tell you that you should believe Pastor Gross. He's a man. He took the witness

stand. He took the oath. He answered all the questions we asked. And then he answered all the questions they asked. And you'll have to judge if what he said is credible. Because if you find it credible, if you find it reasonable that the things he said were true, could be true, then, again, you have to acquit him to the extent that testimony touches on the basic elements of the offenses in this case.

And you heard him deny that he acted with corrupt intent. You heard him explain what his true intent was. You heard him deny that he made any deliberate false statements to the NCUA and give his explanation, at least as to those with which he was confronted up to that point.

You heard him deny that he acted with obstructive intent with the NCUA and what he was really trying to do in light of the long history of compliance with NCUA regulations. And if you find his testimony credible, if you find it reasonable, then, again, despite what the government may argue to the contrary, you must acquit him if that testimony touches on the essential elements of the case.

So, I don't want to say anything else about his direct testimony. It is here for you to consider. And I know you will.

What I will say is that you can contrast the testimony that he offered with that of some of the other government witnesses. And you can contrast his character with what was

revealed about some of the other government witnesses.

You heard Pastor Gross, a man who's led an unblemished life up to the point of this case, who has devoted himself to his flock, his church, his community, and you can judge whether that type of thing, which human beings ordinarily consider in evaluating the character of other people, is sufficient.

I want you to judge the character of the witnesses called by the government: Mr. Freundt, for example, Mr. Hill. Frankly those witnesses don't incriminate Pastor Gross. So whether you believe or disbelieve them or not is almost beside the point. And it may be one of the reasons the government talked little -- said little or nothing about them in its closing argument. But, again, the government has another chance to stand up and you may hear a great deal about Mr. Freundt and Mr. Hill. If you don't, of course, what does that tell you about what the government thinks of its own witnesses. But contrast Mr. Gross's character with the things you learned about the government's own witnesses.

Frankly, we're talking here in this case in large measure about Mr. Gross accepting an alleged bribe. But, who has been seeking a benefit by testifying in this case? Who is seeking a benefit? Well, obviously, Jennifer Wotherspoon. She's seeking not to be prosecuted. Obviously, Rico Hill. He's seeking a reduced sentence for the bank fraud and wire fraud and other crimes to which he pled guilty. Obviously,

Jose Freundt, for the same reason, he's seeking a reduced sentence.

And, interestingly, who is seeking a benefit or who has obtained a benefit? Obviously, Mr. Rollins, the government's summary witness who got up here and said he expects to be paid nearly four hundred thousand dollars for that piece of work that he produced to you, that slide show that is so deeply flawed and certainly not a basis for you to conclude beyond a reasonable doubt any aspect of this case.

So, I just want to say one thing in terms of this character issue. And it's illustrative of this case and how you can't possibly rely on the government's presentation to establish guilt beyond a reasonable doubt. And it relates to two aspects of Jose Freundt.

I told you yesterday, I brought up yesterday this fact that he used the word "bribery" in one of the WhatsApp chats after Mr. Gross had kicked all the Collectables Club people out of the credit union. And I explained to you why that use of the word "bribery" in no way shape or form implicates Pastor Gross because what it reflects only is Mr. Freundt's thinking when he wrote that WhatsApp text. It doesn't reflect what Pastor Gross was thinking. And the judge is going to tell you what matters is what Pastor Gross was thinking, not what somebody else was thinking when it comes to corrupt intent.

Remember what else Mr. Freundt said at the same time

he used the word bribery. He said, among other things, that Pastor Gross was entitled to the consulting free, that he earned it. He says this to Anthony Murgio repeatedly in the WhatsApp chats. And then he goes on to tell you from the witness stand that those consulting fees were not bribes; they were earned by Mr. Gross for the consulting that he did.

So who are you going to believe, the government prosecutors or the government prosecutors' witnesses when they tell you -- with he tells you, Mr. Freundt, that it's not a bribe. It puts their own witnesses at odds with their own theory, their own allegations in this case. And how do you reconcile that? You reconcile it in one way, in two words, not guilty.

What else does Mr. Freundt tell you surrounding that conversation; that he thinks that there's a legal argument to be made to enforce this agreement, this agreement that the government now says is a bribery arrangement. Mr. Freundt keeps saying over and over and over: Let's go to a lawyer, let's file a lawsuit, let's make a demand of some kind, a legal demand by a lawyer.

Who tries to enforce a bribery agreement by going to a law firm and asking a law firm to get involved? Someone who doesn't think it's a bribe to begin with. That's who.

And then in addition -- this is not an attempt at humor -- but Mr. Freundt actually suggests involving his own

mother, Mrs. Freundt, whatever her name may be, to get involved in this. And, again, I ask you: Who invites their own mother to get involved in a bribery scheme unless he doesn't believe it's a bribery scheme at the time he's making these statements.

So, again, more reasonable doubt, more arguments that the government has failed to confront, more witness testimony from the mouths of their own witness that they failed to reconcile with their theory.

And, finally, with respect to Mr. Freundt, one of the stranger aspects of the case was when he told you that on July 21, 2015 when Anthony Murgio was arrested and the Coin.mx office was raided, that he encountered a Secret Service agent, Emily Beyer, who was here two days ago and testified for the defense or called as a defense witness, I should say. And he says that Ms. Beyer told him that he could take money from the Coin.mx account to pay himself. And according to Mr. Freundt, Ms. Beyer, the sworn agent of the United States Secret Service, said to him "and give yourself a nice little bonus." That's Mr. Freundt, unshaken on the stand, unchallenged by the government. This is something that was brought out on cross-examination, brought out by the defense, shown to you not by the government but by the defense. And then subsequently we bring Ms. Beyer from Tallahassee to New York to testify that she did not tell him "give yourself a nice little bonus." She gave sworn testimony that directly contradicts the government's

witness, the government's witness, the only government's witness who uses the word bribery. And the government nonetheless is asking you to believe Jose Freundt. That is unreasonable. That should give you the very doubt you need to acquit in this case.

At the end of the government's presentation the government made reference to something called venue. Venue is another word for place. The place we are in is New York. The venue is New York, the Southern District of New York specifically; and the judge will give you an instruction on venue.

And the government noted that a number of things in the case occurred in New York. Wire transfers pass through a bank in New York on their way from Florida to New Jersey, that e-mails were sent to or from New York. But as you know, this case really took place in New Jersey. It really took place in Florida. And so among the issues you have to decide in addition to guilt or innocence, guilt or not guilty, is venue. And I urge you to consider the jury instruction because if you have doubts about the case, this issue of venue should give you doubts about the case. Because what the government has to prove is that it was foreseeable, foreseeable to Pastor Gross that he ought to know that, for instance, these bank wires were going to pass through New York on their way from either Florida to New Jersey or other places to New Jersey where the HOPE

Federal Credit Union is noted.

Ask yourselves: Has the government proved that it's more likely than not that Pastor Gross -- that it was foreseeable to Pastor Gross that these things would occur when this case has nothing to do with New York.

As you'll read -- as you'll see and hear from the judge and you'll read when you get the jury instructions, you can acquit Pastor Gross on this basis and this basis alone without consideration of the rest of the case, and I urge you to do so.

The government did say at the end of its presentation that the evidence is overwhelming, a point with which I agree. Don't be overwhelmed. There's too much evidence to try and parse through every aspect of it unless you are going to budget yourselves the same amount of time we spent here in trial. In no, way, shape or form am I suggesting you rush your deliberations. You make those decisions. That's not for me to say.

But I will tell you this. If you focus on issues like corrupt intent, if you focus on issues like obstruction, deliberate obstruction, if you focus on issues like false statements, deliberate lies, the analysis in the case, the answer to this case, the verdict in this case becomes instantly clear. And why do I say that?

The fact that there are lots of evidence is no

substitute for the lack of incriminating evidence. Repeating things over and over and over about the ACH transactions and how they were not properly handled is not a substitute for incriminating evidence that the ACH transactions were orchestrated by Pastor Gross in any criminal sense.

Changing the subject from corrupt intent to ACH transactions is nothing more than a mask for the fact that the government doesn't have sufficient evidence of corrupt intent to convince you beyond a reasonable doubt that Pastor Gross possessed corrupt intent.

(Continued on next page)

MR. KLINGEMAN: (Continuing) And the lack of evidence, as you'll hear in the jury instructions, is sufficient to acquit as well when it comes to the critical issues and the elements of the case.

So, shortly I'm going to sit down, in another two or three minutes, and the government is going to have its chance to do what's called the rebuttal. The government gets the last word. Those are the rules. Once I sit down, I am silent, Pastor Gross is silent, with nothing else we can say to you. But I ask you, when you listen to the government's rebuttal, to keep two things in mind: One, if the government says anything new to you that you have not heard before, ask yourselves why is that, why am I hearing something for the first time after the defense has been silenced?

And I urge you to consider two things if the government says anything new: One, we have an answer, as we've had an answer for everything in the case; and, two, if you hear something new, is it fair at this point to introduce it to you? And that's for you to decide.

Now, the second thing is the government may say nothing new. They may repeat the things they have been saying since the opening statement, through the various witnesses, through their three-hour summation yesterday. Again, if there's nothing new, I've done my best to respond to what I can in the time I've taken. God knows, I'm not a perfect lawyer,

and if I failed somehow to address something that matters to you, that concerns you, that gives you pause about Pastor Gross, whatever you do, don't hold it against Pastor Gross. You can hold it against me, but don't hold it against him.

I want to end where I began. I showed you an email from May of 2014 in which Pastor Gross lays out what the government purports to be a bribery scheme. He lays it out in an email, an email that you have, and that you can read that was introduced by the government of all things in this case. But what happened at the end of the case? Right after the November 22nd, 2014 meeting and right after Pastor Gross threw the Collectables Club out of the HOPE Federal Credit Union, what did he do? He wrote his congressman.

And if we could have Defense Exhibit TG19 published for the jury.

I want to end with this. Ladies and gentlemen, the government said yesterday that the point of this conspiracy, the point of the motive that Pastor Gross had, among other things, was to keep the bribery scheme hidden. Those are the words they used, "keep it hidden."

So, on December 19th, 2014, at a time when Pastor Gross is supposedly keeping it hidden, he makes a request to his own congressman to investigate the situation. He makes a request that requires him, as the headline in this form indicates, Privacy Act request, he waives his right to privacy,

he waives his right to keep things secret, to keep things hidden, and he makes the following request of the congressman -- and this is in the words of Pastor Gross -- "We need our congressman's assistance. I sit on the board of a local credit union that is 35 years old and founded in the Lakewood area. Over the past several years, we have attempted to grow, and at each point, the NCUA has come in and stopped us using their enforcement powers. We have not challenged them until recently. We were able to have a business join our CU, which would represent significant revenue for the CU and provide us the ability to grow and make financial services available to the unbanked and underbanked in our area. The NCUA has told us that this business cannot be a member of the CU because the parent company is outside of our field of membership. This makes no sense at all. Our charter states that a business in our FOM can be in the CU. It seems like they are invested in us remaining small" and "forcing us to merge with another credit union" -- "or forcing us to merge with another credit union.

"This CU was started by the African-American community and has fought to remain open in helping the financially challenged. These actions seem arbitrary and punitive. We do acknowledge that we needed to add better controls and compliance, which we have done and are doing, but to say that a major source of revenue now needs to go to another bank is not

fair to us. This is the situation in a nutshell. Is there a liaison that we can speak to? Because we are appealing their decision."

It's signed Pastor Trevon Gross.

Now, again, as I started: Who engages in a bribery scheme, an obstruction of federal regulatory agency, lies to a federal regulatory agency, and simultaneously invites their member of Congress to conduct an investigation? Someone who's not taking bribes, someone who's not obstructing, someone who's not lying.

So, there's been much debate about the evidence, and I submit to you a reasonable debate about the evidence is enough to give rise to reasonable doubt. If both sides rely on the same evidence, then what does that tell you? That the evidence is debatable. If evidence is debatable, that's reasonable doubt.

Use the power that we all have given you, by selecting you as jurors in this case, to right the wrong of this allegation, this indictment of Pastor Gross. Let Pastor Gross return to his flock and his family. Find him not guilty.

Thank you.

THE COURT: Thank you, Mr. Klingeman.

Mr. Noble?

MR. NOBLE: Thank you, Judge.

Good morning, ladies and gentlemen. Now, Mr. Creizman

and Mr. Klingeman spoke for several hours, and I don't have time to respond to everything that they told you, but I don't have to because the evidence makes clear what the responses are to those arguments.

Ladies and gentlemen, when you go back to the jury room to deliberate, it's important that you focus on the right things, and that's the evidence and the law as Judge Nathan will instruct you.

Now, most of what you heard from defense counsel was designed to distract you, to invite you to speculate, and to make findings that go against the evidence and your own common sense. Defense counsel wants you to be thinking about anything and everything other than the evidence because that's their only hope. Because when you focus on the evidence, and you apply the law, there is no question that the defendants are guilty.

So I'm just going to respond to a few of the arguments that they raised, some of the most important points. And, remember, it's your recollection of the evidence and your assessment of it that matters. And whatever I miss, I'm going to rely on you to use your common sense when you consider the defense's arguments.

Now, both Mr. Creizman and Mr. Klingeman talked to you a lot about the burden of proof that the government has. But to hear defense counsel describe the burden of proof, proof

beyond a reasonable doubt, you'd think that it's an impossible standard to meet. It's not, and it's not meant to be.

The standard is not guilty beyond all doubt, it's beyond a reasonable doubt. And Judge Nathan will instruct you on the precisely what that means. But keep this in mind: It's the same standard that is used every day in courtrooms across this country. It's the same standard that has been applied since the founding of our country.

And with that, let's talk about some of the defense's arguments.

Now, one thing that both Mr. Creizman and Mr. Klingeman talked to you about was the government's cooperating witnesses, Jose Freundt and Ricardo Hill. They noted that Ms. Choi had not spent a lot of time during her closing argument talking to you about their testimony. They even seemed to suggest that these cooperators' testimony was somehow helpful to their own clients. There could be nothing further from the truth.

The reason Ms. Choi did not have to spend a lot of time speaking about what Mr. Freundt and Mr. Hill testified to you about is because there is a mountain of documentary evidence in this case showing that the defendants are guilty. It includes the defendants' emails, their Gchats, their WhatsApp messages, and their recorded statements that you heard, all the written agreements that you saw, and the bank

records, and credit card records.

Defense counsel even argued that Mr. Freundt and Mr. Hill did not think that they had done anything wrong. I wonder if they were listening to the same testimony as the rest of us.

Now, let's be clear: Defense counsel desperately wants you to believe that Mr. Freundt and Mr. Hill didn't do anything illegal. Now, take a minute to ask yourselves why. Why did the defense spend so much time trying to convince you of that? Because the defendants are similarly situated to Mr. Hill and Mr. Freundt.

Who was working right alongside Jose Freundt and Ricardo Hill to pay bribes and keep control of the credit union? Yuri Lebedev.

And who was the person demanding, and receiving, the bribes from them? Trevon Gross.

Ladies and gentlemen, let's be clear: Mr. Freundt and Mr. Hill are criminals. Both of them got up on that witness stand and told you that themselves. They admitted that they had committed crimes with the defendants. They told you that they have pled guilty, they've taken responsibility, and they told you that they're hoping for leniency from the Court for their cooperation.

But keep this in mind: It wasn't the government who selected these witnesses. The defendants did. It was Lebedev

who chose to work with them at Coin.mx and to pay bribes with them. It was Gross who put them on the board of the credit union and turned over the keys to that institution to them.

The reason why defense counsel wants you to believe that Mr. Freundt and Mr. Hill didn't do anything wrong is because they know that the cooperators' testimony is devastating. Let's talk about a few examples.

Ricardo Hill told you about those conference calls that he had with Lebedev, and Anthony Murgio, and the others where Murgio told them about the bribes. He told them about the payments that they were making to Trevon Gross to take over the credit union.

Freundt also testified about that WhatsApp CU strategy session that they had after the November 22nd, 2014 meeting, the one that Freundt invited Lebedev to join. Why would Mr. Freundt invite Mr. Lebedev to join a conversation where he then talked about the bribe scheme if Mr. Lebedev wasn't involved?

Take a look at that chat. You'll see that after Lebedev joined, Mr. Freundt talked about how he wasn't going to mention the corrupt payments that had been made to Mr. Gross in the letter that they were going to send to him. Freundt explicitly states that he didn't want to mention, quote, bribery in the letter. What was he referring to? He was referring to all of the payments that had been made to Trevon

Gross.

Now, ask yourselves: Did Lebedev chime in at that point in the conversation and say, hey, what are you talking about? We're not engaged in bribery. Of course not, because he knew that that was what they were doing.

Ricardo Hill also told you that he gave Mr. Lebedev and Murgio free rein over HOPE Federal Credit Union, that it was Mr. Gross who taught Hill how to process the ACH transactions and gave him back-end access to the credit union.

Mr. Hill told you that even after Gross realized that millions and millions of dollars in ACHs were passing through the credit union when they didn't have proper controls in place, Mr. Gross never put a stop to it. In fact, it was Mr. Gross who approved increasing the limits on ACH processing to a hundred million dollars a month. Ask yourselves: Is that evidence of Trevon Gross acting in good faith, trying to remain compliant with the NCUA's regulations?

And remember the telephone call that Trevon Gross had with Jose Freundt after the November 22nd meeting. Freundt told you that on that call, all that Mr. Gross was interested in was the money, the $50,000 additional bribe and the $6,000 in consulting fees that he was owed. Mr. Freundt told you that it became crystal clear to him, at that moment, that Mr. Gross was only in it for the money.

Now, defense counsel also wants to have it both ways

when it comes to these witnesses. They told you that the cooperating witnesses were telling the truth when it helps their clients, but they also suggested that the same witnesses were lying when they told you about the crimes that they committed with Yuri Lebedev and Trevon Gross. The defendants wanted you to pick and choose what to believe from these cooperating witnesses. They want you to believe them, but only when it's about something that helps their clients. They cannot have it both ways.

You have to take the good and the bad in these witnesses' testimony. And don't you think that if they were lying for the government, they would have done a better job? That they would have testified in a more incriminating way, about more incriminating conduct that the defendants engaged in? But they didn't. They limited their answers to what they knew.

And that brings me back to a very important point: At the end of the day, you don't even have to rely upon these cooperators' testimony to convict the defendants. That's because their testimony is corroborated and supported by all the other evidence that you've seen and heard. You should consider that evidence and whether the evidence matches up to the cooperators' testimony. We submit to you that it does. And when you consider it in context, you'll see that all of the evidence supports it.

Now, Mr. Klingeman raised an issue about Mr. Freundt that I'd like to address concerning his testimony about what Special Agent Beyer told him. He argues that you can't trust Mr. Freundt's testimony because of those statements that he said Special Agent Beyer made to him. This is a total distraction. It's a sideshow.

You heard Special Agent Beyer's testimony. The defense called her as a witness. And she told you that although she doesn't have a specific recollection, she would have told Freundt that he could carry out transactions that he would have done in the normal course of business. Mr. Freundt interpreted that, apparently, as authorization to pay himself the salary he was owed. But in the end, this doesn't matter, because whether Freundt paid himself out of the bank account or not, and whether the agent told him that it was okay to do so or not, doesn't tell you anything about Mr. Gross' guilt or Mr. Lebedev's guilt.

It also doesn't matter, as Mr. Klingeman suggested, whether Jose Freundt thought that Mr. Gross deserved the consulting fees that he was owed or thought that they should consult a lawyer. Read the rest of Jose Freundt's statements. You'll see him talking to Anthony Murgio about whether to consult lawyers. You'll see Mr. Freundt asks, hey, should we tell the lawyers about the payments that we made to Mr. Gross? What does Anthony Murgio say? No, of course not. Of course

they're not going to tell the lawyers about the illegal bribe payments. That argument is just another distraction.

Now, both defense lawyers have spent a lot of time arguing that the defendants didn't act corruptly. And, obviously, that's a key issue in this case. They've argued that the defendants engaged in the credit union deal in good faith, that the bribes that Lebedev helped Murgio pay to Gross were so-called bona fide payments for services. But you know that isn't true.

Yesterday, Ms. Choi walked you through no less than eight different ways in which this bribery scheme was corrupt from the outset. I'm not going to go through all of those eight ways, but I do want to address some of the defense lawyers' arguments.

And before I do, I want to say something about the meaning of corruption, because Mr. Klingeman talked to you about it yesterday. Ms. Choi also explained to you the meaning of corruption, and Judge Nathan is going to instruct you on the legal definition. But let's not lose the forest for the trees. There is a legal definition of corruption, but it's not difficult to understand. Corruption permeated this case. It permeated the deal between the Collectables Club and Trevon Gross. Gross, and Lebedev, and Murgio all lied about this scheme. They lied to the NCUA, they lied to other financial institutions, they even lied to each other. You know

corruption when you see it.

Now, Mr. Klingeman started his argument yesterday by suggesting that the government should answer some questions about Mr. Gross being a bribe-taker. I'm happy to do so.

Ladies and gentlemen, I'm about to give you some responses, but you already know what the answers are because the evidence is clear. As Mr. Klingeman and Ms. Choi told you, this isn't a close case.

Now, Mr. Klingeman first asked: If Trevon Gross is a bribe-taker, why did he turn down the money when it was offered to him directly by Anthony Murgio? Why did he instead direct Anthony Murgio to pay the bribes to his church?

As you have learned by now, there is no distinction between Trevon Gross and Hope Cathedral. A dollar in the church's pocket is a dollar in Gross' pocket. It's as simple as that. You saw that when the church got paid, Trevon Gross got paid. Gross used the church's accounts to write himself and his wife paychecks, to pay his personal expenses, like for his SUV and his pool, and the juices, and the massages, to pay off his personal credit cards, to write himself checks out of the church's bank account, even when there wasn't any money in it.

Gross also told Anthony Murgio to pay the bribes to the church accounts to make them look legitimate, so he could take that witness stand and tell you, oh, no, those payments

weren't for me, those payments were for the church.

But you know, it didn't make any difference if the bribes went to the church's account or Gross' own pockets. They ended up in the same place.

Now, Mr. Klingeman also argued that Gross' statements in that secretly recorded November 22nd meeting somehow proves he is innocent, and that befuddles me. You should reject that argument and think about it. Mr. Klingeman would have you believe that at that meeting, Gross was so fed up with Anthony Murgio, and Lebedev, and their coconspirators, that he decided to demand another $50,000 payment for his church because the group wasn't doing what they said they were going to do. That just doesn't make any sense.

When you look at the evidence, and you look at the chronology, you'll see he demanded that $50,000 payment because he was going to let them keep control of the credit union. As he testified, as he admitted on the witness stand, he did his end of the bargain, he got the existing board members to resign, those three resignation letters you saw. Does that make sense, if it wasn't corrupt?

Now, Mr. Klingeman also asked: If Trevon Gross is a bribe-taker, why did he return that $50,000 to Anthony Murgio in November 2014? You now know why - because at that point, Trevon Gross had already struck another deal behind Anthony Murgio's back to work directly with Kapcharge, the company that

Gross had learned at that point had paid him the $120,000 bribe back in June. Did Gross return that payment, the $120,000 payment, or the other $30,000 that Mr. Murgio had already paid him, or the thousands more in so-called consulting fees? That's the real question you should be asking yourselves.

And it brings me to the last set of questions that Mr. Klingeman had for the government. If Trevon Gross is a bribe-taker and lied to the NCUA, why did he talk to the FBI? Why did he enlist the help of his congressman, as Mr. Klingeman just pointed out again? Why did he take the witness stand?

Mr. Klingeman suggested to you that his client is innocent because he took that witness stand. Nothing could be further from the truth. A defendant, ladies and gentlemen, has no obligation to testify. Indeed, it is his right not to do so. But when a defendant testifies, you have to scrutinize his testimony just like any other witness. And, like any other witness, you have to think about the defendant's motivation to lie.

Trevon Gross took the witness stand because he thought he could explain his way out of the crimes. You saw him testify. He is smart, he's well educated, and he's well spoken. Trevon Gross talked to the FBI because he thought he could fool the FBI. He thought he could fool his own congressman. And he took that witness stand because he thought that he could fool you, to pull the wool over your eyes. Just

like he fooled the NCUA about the Collectables Club and Kapcharge, just like he fooled Alloya and United Advantage into processing ACHs for the credit union, just like he fooled that city zoning inspector about the credit union only being open to church members.

Remember when I asked him about that on cross-examination, how he tried to wriggle away from his own emails? You remember that cross-examination. Gross had an explanation for everything. But you know what gross and his attorneys can't explain away? The mountain of incriminating evidence. They can't explain why Gross never told the NCUA about the arrangement that he had with the Collectables Club or the bribes that he received.

Now, Mr. Klingeman also asked why Gross would write about the bribery scheme in the emails with Anthony Murgio. Why didn't they do the deal in the back booth at a diner, he said. Well, first of all, Trevon Gross never thought that his emails would end up in evidence at trial. Criminals, as you know, often put things in writing or even record their own conversations when they don't think anyone is going to see what they wrote and don't think anyone is going to hear what they say.

MR. KLINGEMAN: Objection. Move to strike.

THE COURT: Overruled.

MR. NOBLE: Anthony Murgio is Exhibit A for that. He

documented a lot of his criminal conduct. And Trevon Gross, and his attorneys don't deny, that Anthony Murgio committed crimes. The real question that you should be asking is why didn't Gross put all the details in writing for the NCUA? If this were truly a legitimate business deal, if these were truly bona fide payments, why not be open and honest with the NCUA? Why not record the details of the payments or the memorandum of understanding with the Collectables Club in the board meeting minutes? Why go to such great lengths to lie to Meg Flok about the Kapcharge file? Why enter into side agreements with Kapcharge and cook the books to make it look like this credit union was well capitalized? Why tapdance with the examiners for six months to the point of exhaustion?

Ladies and gentlemen, Trevon Gross has no explanation for those things, because he's guilty.

Now, both Mr. Creizman and Mr. Klingeman suggested that their clients intended for this deal to help the credit union. This deal did not benefit the credit union or its members at all. This was Gross selling out the credit union and its members to Lebedev, and Murgio, and the others, so that they could use it to process transactions for Coin.mx.

But, ladies and gentlemen, even if the relationship with Coin.mx and Kapcharge somehow helped the members of the credit union, the $150,000 in donations and thousands of dollars in consulting fees were still bribes. The defendants

are still guilty. And why is that? Because you don't need to find that the bribes hurt the credit union in any way. All you need to find is that these corrupt payments were intended to influence Trevon Gross. And there can be no doubt that they did.

You heard Gross admit on the witness stand that the payments influenced his decision-making. In fact, you can find that the defendants' conduct was intended to help the credit union as long as they were motivated, at least in part, by a corrupt purpose. And for Lebedev, the purpose was to help Murgio make money for Coin.mx by processing credit card transactions that would have been rejected by other banks. And for Gross, it was also about the money, to secretly make money for himself and his church by selling out the credit union.

Now, defense counsel also argued that there is nothing inherently illegal about nominating people to the board of a federal credit union, that there's nothing inherently illegal about processing ACH transactions. Of course, there's not. That's besides the point. Standing alone, those are perfectly legal activities, but you have to look at all the circumstances. You have to look at all the facts about why Trevon Gross and Yuri Lebedev did what they did.

What makes the defendants' conduct illegal is that the decisions were being made concerning the ACH processing and the board nominations as a result of the bribes. Lebedev, Murgio,

Hill, and Freundt all paid bribes to Trevon Gross to gain and keep control of the credit union that they had no business being involved in.

Now, Mr. Creizman told you that Lebedev didn't have a stake in the credit union. And that really befuddled me because if Yuri Lebedev truly intended to help the credit union, why didn't he have a stake in the venture? Lebedev was the vice chairman of the board. He was Trevon Gross' deputy. He was supposed to be the chief technology and security officer for the credit union. And he helped Murgio, Kapcharge, and Gross process over $60 million worth of ACHs through it. But he didn't have a stake? That just shows Lebedev's intent in getting involved in the credit union wasn't pure. It was corrupt. And in return for the bribes that were paid by Lebedev and the others, Gross gave them control, even though he knew they didn't qualify for membership and even though he had no idea what they were doing. Gross didn't care, as long as it helped him and his church.

Mr. Klingeman suggested to you that Gross is innocent because he didn't know that Lebedev and Murgio wanted to use the credit union to process those illegal Bitcoin transactions for Coin.mx. This is a red herring. It doesn't matter whether Gross knew why Lebedev and Murgio wanted to control the credit union or if he understood the nature of the transactions that they were pumping through it. As long as Gross accepted the

bribes from Lebedev and Murgio with a corrupt intent, he's guilty.

And contrary to Mr. Klingeman's suggestion, the evidence shows that Gross did know that Murgio and Coin.mx were engaged in virtual currency. Rico Hill told you about that. He told you he had spoken to Trevon Gross about Coin.mx. And there's also the email when Trevon Gross forwards a Federal Reserve seminar about virtual currency and the Bank Secrecy Act to Murgio and Lebedev. Why would you do that if you had no idea that these guys were involved in Bitcoin? Mr. Klingeman didn't address that point.

Now, Mr. Klingeman also told you that the payments that the Collectables Club and Kapcharge made to Hope Cathedral didn't even benefit Trevon Gross personally. I mean, that should be rejected on its face. You should also reject Mr. Gross' testimony to the same effect. You should reject the notion that these payments were only meant to benefit the church.

Now, Trevon Gross told you that the church had paid credit union expenses. There's no evidence of that. There is no documentary evidence, not a shred, to support Gross' testimony that the church had paid $150,000 in expenses for the credit union. All you have is the word of Trevon Gross. And, as you saw in his answers that he gave on cross-examination, you can't trust a single word that man says.

You also know that Gross' testimony is not true because it's contradicted by the documentary evidence that you have seen, by the bank records that were summarized by John Rollins, the records showing that thousands and thousands of dollars from the bribe payments did flow directly to Trevon Gross' pockets in the form of payroll checks, cash withdrawals, car loan payments, movie tickets, various meals, and those massages.

Mr. Klingeman suggested that you have to acquit if you don't like the accounting method that Mr. Rollins used. He talked to you a lot about FIFO, versus LIFO, versus direct tracing. It's another distraction. You can look at the bank records yourselves. You can look at Trevon Gross' credit card statements. You'll see the bribe payments going into the church's accounts and then going to pay Trevon Gross' personal expenses.

Now, let's talk a little bit about his credit cards for a moment. Mr. Klingeman pointed out that one of the expenses that Mr. Rollins had traced to the bribe payments were those college admission expenses for Gross' children. Remember those? Mr. Klingeman said that Mr. Rollins' analysis is obviously wrong because those expenses were incurred in January 2014, before the bribe payments were made. But take a look at the underlying credit card records. You'll see that Mr. Rollins was able to trace some of the bribe money to the

credit card that Gross had paid off, the credit card that he had used back in January to pay for his children's college applications.

Mr. Rollins explained to you that when you properly applied the FIFO methodology to credit cards, it's the payments that are attributed to the oldest expenses first, not the most recent payments. So, Mr. Rollins isn't mistaken, Mr. Klingeman is.

But setting all of that aside, even if all the bribe money did go to benefit the church, it wouldn't make a difference. Certainly, when it came to money, the church was Gross, and Gross was the church. There was no difference between giving money to the church and giving money directly to Gross. And, more importantly, Gross cannot escape the law against bribing a bank official for merely requesting that his coconspirators pay the bribe payments to a third party.

When Mr. Klingeman told you that the government had to prove that Mr. Gross lined his own pockets, he was wrong. We don't have to prove that. It's what the evidence shows, but we don't have to prove it. Listen very carefully to Judge Nathan's instructions on this point. As long as Gross agreed to accept the corrupt payments with the intent to be influenced, he is guilty of bribery, whether or not he got the money directly, whether the church got it, or whether the money was sent to his favorite basketball team or baseball team. If

anything, having the bribe money flow through the church, as I previously explained, is just more evidence that he attempted to hide the illegal scheme and the purpose of the corrupt payments.

Now, Mr. Klingeman, in his closing, and Ms. Santillo, in her opening, told you that you'd find evidence of good faith throughout this case. This is wishful thinking on their parts. Ask yourselves: Was Gross acting in good faith when he violated the credit union's field of membership requirements by opening accounts for Collectables Club, and Kapcharge, and Wakpamni, that payday lender that was based in South Dakota, even though he knew they had no connection whatsoever to Lakewood, New Jersey? Was he acting in good faith when he admitted under oath that the credit union did not do any due diligence on any of the entities or Anthony Murgio, even though Gross allowed them to control and operate the credit union? Was he acting in good faith when he gave them back-end access, even though they hadn't even opened up accounts or funded them, and they hadn't even been elected to the board? Was he acting in good faith when he suggested that the credit union enter into a side agreement with Kapcharge to hide the fact that the money Kapcharge was going to put into the credit union wasn't really revenue to the credit union, but rather prepaid fees? Was he acting in good faith when he went behind Anthony Murgio's back and cut a side deal with Mark Francis at

Kapcharge?

Remember those emails we showed you? What did Trevon Gross say to Mark Francis after they decided to cut out Anthony Murgio and keep processing the ACHs through the credit union for Kapcharge? Trevon Gross said: Let's roll.

Was Trevon Gross acting in good faith when he failed to turn over the Collectables Club member email accounts to the National Credit Union Administration, even though he knew he was supposed to turn over and had been asked to turn over all of the email accounts? What did he have to hide in those email accounts if this were truly a legitimate business deal?

Was Trevon Gross acting in good faith when he wrote checks to himself for thousands and thousands of dollars out of the church's account at the credit union, even though he knew there was no money in it? And was he acting in good faith when he testified on direct examination that the so-called donations to his church were not related to his decision to turn over the control of the board of the credit union, but then admitted on cross-examination, when confronted with the prior statements he had made to the FBI, that the payments had, in fact, influenced him?

I could go on, but you get the point. The actions that Trevon Gross took do not reveal good faith, they show corruption, the corruption that goes to the heart of this case, the corruption that led Gross to accept the bribes in the first

place in exchange for control of the credit union.

Now, earlier this morning, Mr. Klingeman claimed that it was in the government's summation that you first heard about net worth ratio. That's not true. Ricardo Hill told you about the scheme to manipulate the net worth ratio, about moving the money in and out of the accounts toward the end of the month. And you heard Trevon Gross himself talking about it with Kapcharge on that recorded call. And the reason why you didn't hear about it from the NCUA examiners, that Mr. Klingeman pointed out testified, is because they didn't know. Gross' lie worked. He tricked the NCUA.

And just think about this point made by Mr. Klingeman. He made a big deal about the fact that Ms. Choi walked you through this very carefully in her summation. But what didn't Mr. Klingeman do? He didn't tell you that the evidence is wrong, that Ms. Choi was wrong.

I've talked a lot about Mr. Klingeman's argument regarding his clients, and I'd like to address some of the other arguments that Mr. Creizman raised about his client, Yuri Lebedev. Mr. Creizman didn't spend a lot of time yesterday talking about the evidence against his client. And to the extent he did, Mr. Creizman's essential argument was down to this: The evidence against Lebedev is confusing. It's not confusing. You don't have to have a Ph.D. in bank fraud to understand what Lebedev and Murgio were doing here, ladies and

gentlemen.

Don't get confused by Mr. Creizman's own confusion and his confusing arguments regarding various things like Lightning Payments. The government never said that Lightning Payments was a payment processing company. It's just one of Lebedev's companies that he used to help Anthony Murgio in the processing of the transactions for Coin.mx. The payment processors, as you heard, are First Data and authorized.net. Focus on the evidence and the testimony relating to those entities.

You saw in the text messages between Lebedev and Murgio that Lebedev clearly understood what he was doing, even if Mr. Creizman did not. Lebedev knew that he was helping Murgio hide the fact that Coin.mx was processing illegal Bitcoin transactions from the banks using those phony websites, like collectPMA.com and My Extreme Delivery. And why were they lying to the banks? To convince the banks to process the credit and debit card transactions for Coin.mx that would make them money. They were getting money from the banks by lying to the banks. It's as simple as that.

And look at Lebedev's Gchats and WhatsApp messages with Anthony Murgio. Ms. Choi walked through them yesterday. What did he tell Murgio about setting up My Extreme Delivery to process the Coin.mx transactions? That it was brilliant, that it was just like Collect PMA. Ladies and gentlemen, that shows that Lebedev knew what he was doing. He knew he was helping

Anthony Murgio trick the banks.

Now, Mr. Creizman argued that the government is also taking Mr. Lebedev's comments out of context. But you had the context, ladies and gentlemen, and it helps us. It's precisely the context in which Lebedev makes his statements, that shows he's guilty. Let's take a few examples.

Listen, again, to the recording of the November 22nd, 2014 meeting. When does Lebedev offer to give Anthony Murgio the $50,000? After it's clear from the context of the conversations what they're all talking about. They're talking about making an additional $50,000 bribe to keep control of the credit union. Lebedev makes the comment after it's clear they're talking about a quid pro quo.

Now, Mr. Creizman also pointed out that, in his mind, nobody was paying attention to Mr. Lebedev at that time. It doesn't matter. The point is that Lebedev said that he would pay the $50,000. It doesn't matter whether Anthony Murgio accepted the offer on the spot or not. Lebedev's own statement shows that he knew what was going on, and he was willing to pay the $50,000.

And look at the WhatsApp discussion between Lebedev and Murgio a few days later. Mr. Creizman didn't talk to you about that piece of evidence. In that conversation, Lebedev again offers to give Anthony Murgio his own money to pay the bribe.

And then there's the CU strategy WhatsApp that I mentioned earlier with Jose Freundt where Jose Freundt uses the word bribery to describe what they're all engaged in. Again, did Lebedev chime in at that point and say what are you talking about? No. He knew that this was bribery.

And how else do you know that Lebedev's intent was corrupt? From all the other incriminating statements that he made in his discussions with Murgio. And I'd like to show you just a couple examples from his own WhatsApp.

Can we bring up Government Exhibit 4510, please, and flip to line 4949.

What does Yuri say to Anthony Murgio on November 24th, 2014, just a couple days after that meeting we were talking about? "Money does unbelievable things to people, even pastors." He's talking about corruption, he's talking about how they corrupted Trevon Gross and paid bribes to him.

Let's flip to line 10209.

What does Yuri Lebedev say here, the next month? "So I was thinking, if I can get in with these banks or credit unions here, then it should help you once we get your credit union, and I'll have all the ropes, man." And then Anthony Murgio says, "Big time." Yuri Lebedev responds, "And software. Legally or other way."

Ladies and gentlemen, that shows you that Yuri Lebedev was willing to do things legally or the other way. What's the

other way? Through criminal activity.

Now, Mr. Creizman also told you that Lebedev was simply in the wrong place, at the wrong time, with the wrong people, that Mr. Lebedev didn't have any idea what was going on around him, that crimes were being committed around him left and right, but he had no idea. I submit to you that Lebedev has an uncanny knack of being involved in some of the most incriminating conversations that you saw at this trial. He was smack-dab in the middle of the criminal conversations over and over again. Do you seriously believe he didn't know what was going on?

Mr. Creizman himself has told you repeatedly how smart Yuri Lebedev is, that he has two Master's, one in computer science and one in physics, and a Ph.D. in mathematics. Lebedev is no dummy. He knew exactly what he was doing and exactly who he was dealing with.

Now, don't get me wrong, the government is by no means saying that Lebedev was the mastermind of these schemes. Far from it. But it doesn't matter. Different people can play different roles in criminal conspiracies, some large, some small. Some people are in the conspiracy for a long time, some people are in the conspiracy for a short time. Under the law, it doesn't matter if they were organizers or leaders. Just because Yuri Lebedev was not as involved as Anthony Murgio or Trevon Gross in the conspiracies, it doesn't mean he isn't

guilty.

So the question for you is not how much of a role in the conspiracy Lebedev had, but whether he knowingly participated in them, whether he helped Anthony Murgio commit the crimes that they did together, regardless of the extent of his participation.

THE COURT: Mr. Noble?

MR. NOBLE: Yes, Judge.

THE COURT: How much time? You're over the estimate.

MR. NOBLE: Not too much longer.

THE COURT: Quickly.

MR. NOBLE: Okay.

And don't forget: Yuri Lebedev played a key part in each of these conspiracies. He was the architect of the back-end of Coin.mx, the payment processing system, and he was on the board of the credit union. He helped process the ACH transactions through the credit union, and he offered to help pay the additional bribes.

And you know that Yuri Lebedev was well compensated for all of this. You saw the records showing that Anthony Murgio transferred over $20,000 to Mr. Lebedev's company, Intelligent VR. Mr. Creizman said that that's not a lot of money. I disagree. And what's more, it was easy money for Yuri Lebedev.

Ladies and gentlemen, Yuri Lebedev was not a bit

player in the crimes with which he's charged. The evidence shows that he knew exactly what he was doing, and that he's guilty.

Now, Mr. Klingeman, in his argument this morning, talked to you about venue. And there, I just point you to Ms. Choi's presentation on these points. But ask yourselves this: Do you really believe that it was not reasonably foreseeable for a well-educated, tech savvy chairman and CEO of a federal credit union that a wire transfer from an out-of-state company might pass through a bank in Manhattan? Use your common sense. It's completely foreseeable.

Now, I'd like to just make a few concluding remarks.

Defense counsel suggested to you that the consequences of the defendants' crimes are now your responsibility, that the fate of the defendants is in your hands. That's simply not the case. The defendants alone are responsible for the consequences of their actions. They were the ones who conspired to pay bribes and receive bribes in connection with the takeover of HOPE Federal Credit Union. They were the ones who agreed to lie to the NCUA and obstruct its examination. And it was Yuri Lebedev who helped Anthony Murgio trick the banks into processing credit and debit card transactions for Coin.mx. It was the defendants' greed that landed them in this courtroom, nothing else.

Now, I know that that doesn't diminish the difficult

task that you have before you today. You have a very serious duty. But it's your job, as jurors, to examine the evidence dispassionately and apply the law that you're about to hear. You cannot let whatever sympathy that you might have or not have for the defendants or for the government's witnesses interfere with your duty, because at the end of the day, it doesn't matter whether you like the defendants or you don't like them. We're not asking you to judge whether they are good people or not. Even if the defendants have otherwise lived exemplary lives, even if they've done all sorts of good things, it doesn't mean they're not guilty. Good people can still commit crimes.

Now, because of the careful attention that you've paid over the last four weeks to the evidence in this case and the arguments that the attorneys have made to you, the defendants have had a fair trial, and the government has had a fair trial. They've had their day in court, and now it's time for you to do your duty. Go back to that jury room and decide this case on the principles of law that Judge Nathan is about to explain to you. Decide this case without fear, without favor, without prejudice, and without sympathy. Decide this case based on all of the evidence that you have seen and that you have heard over the last four weeks.

If you do all of that, and if you use your common sense, there's only one verdict to reach, one verdict that fits

with all the law and the evidence that you've seen - that the defendants are guilty as charged.

THE COURT: Thank you, Mr. Noble.

Ladies and gentlemen, what I'm going to do is begin giving you the instruction in about -- I'll start, I'll do about 15 minutes, and we'll take break, and then come back and finish it with the rest of the instructions.

For deliberations, each of you will have a copy of these instructions, but I do want to make sure you hear it once, and so I'm going to give it to you, and I appreciate your continued attention.

Counsel, any reason to speak to me before the charge begins?

MR. KLINGEMAN: No, your Honor.

MS. CHOI: Your Honor, the issue with regard to the --

THE COURT: Yes, thank you. One housekeeping matter point? Yes.

There was one exhibit that was meant to be moved into evidence and agreed to be moved in, but didn't technically get moved in, so I have allowed a reopening of the evidence, so that DX, Defendants', 24, which was moved by Mr. Creizman, will be admitted.

(Defendant's Exhibit 24 received in evidence)

MR. CREIZMAN: Thank you, your Honor.

THE COURT: And with that, anything further before the

charge, counsel?

MS. CHOI: No, your Honor.

MR. KLINGEMAN: No.

THE COURT: Mr. Creizman?

MR. CREIZMAN: No, your Honor.

THE COURT: All right. Thank you.

As I say, I'll charge for about 15 minutes, and then we'll take a quick break, and then I'll give you the rest of the instructions.

You've now heard all of the evidence in the case, as well as the final arguments of the lawyers for the parties. It is my duty at this point to instruct you as to the law, and it is your duty to accept these instructions of law and apply them to the facts as you determine them.

On these legal matters, you must take the law as I give it to you regardless of any opinion that you may have as to what the law may be or ought to be. It would violate your sworn duty to base a verdict upon any other view of the law than that which I give you.

If an attorney or anyone else at trial has stated a legal principle different from any than I state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room. You may

take a copy of these instructions with you into the jury room. As I said, I'll provide each of you with a copy.

Your role is to decide the fact issues that are in the case. You are the sole and exclusive judges of the facts.

(Continued on next page)

THE COURT: (Continuing) You pass upon the weight of the evidence or lack of evidence; you determine the credibility of the witnesses; your resolve such conflicts as there may be in the testimony; and you draw whatever reasonable inferences you decide to draw solely based on the evidence and from the facts as you have determined them. You must determine the facts based solely on the evidence received in this trial.

In determining the facts, you must rely upon your own recollections of the evidence. What the lawyers have said -- for instance, in opening statements, in closing arguments, in objections, or in questions -- is not evidence. You should bear in mind particularly that questions put to witnesses, although they did provide the context to answers, are not themselves evidence. It's only the answers that are evidence.

I remind you also that nothing I have said during the trial or will say during these instructions is evidence. Similarly, the rulings I have made during the trial are not any indication of my views of what your decision should be.

The evidence before you consists of the answers given by witnesses, the exhibits, and the stipulations that were received in evidence. If I have sustained an objection to a question or told you to disregard testimony, the answers given by a witness are no longer part of the evidence in this case and may not be considered by you.

As I have said, you must determine the facts by

relying upon your own recollection of the evidence. This case is not to be decided on the rhetoric of either the attorneys for the government or the attorneys for the defendants. The lawyers' arguments are intended to convince you to draw certain conclusions from the evidence or lack of evidence. Those arguments are important. You should weigh and evaluate them carefully. But you should not confuse them with the evidence. If your recollection of the evidence differs from the statements of the lawyers, follow your recollection.

You should draw no inference or conclusion for or against any party by reasons of lawyers making objections or my rulings on such objections. Counsel have not only the right but the duty to make legal objections that they think are important. You should not be swayed against the government or either defendant simply because counsel for either side has chosen to make an objection. Similarly, statements made by counsel when arguing the admissibility of evidence are not to be considered as evidence.

If I comment on the evidence during my instructions, do not accept my statements in place of your recollection. Again, it is your recollection that governs.

Do not concern yourself with what was said at sidebar conferences or during my discussions with counsel. Those discussions related to rulings of law, which are my duty, and not to matters of fact, which are your duty to determine.

At times I may have admonished a witness or directed a witness to be responsive to questions, to keep his or her voice up, or to repeat an answer. My instructions were intended only to clarify the presentation of evidence. You should draw no inference or conclusion of any kind, favorable or unfavorable, with respect to any witness or party in the case, by reason of any comment, question, or instruction of mine. Nor should you infer that I have any view as to the credibility of any witness, as to the weight of the evidence, or as to how you should decide any issue that is before you. That is entirely your role.

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence. It would be improper you to consider any personal feelings you have about the defendants' race, ethnicity, religion, national origin, sex, age or other similar factor. Similarly, it would be improper for you to consider any personal feelings you may have about the race, ethnicity, religion, national origin, sex, age, or any other similar factor of any other witness or anyone else involved in this case. It would be equally improper for you to allow any feelings you might have about the nature of the crime charged to interfere with your decision-making process. The defendants are entitled to a trial free from prejudice and our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence.

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty in an attitude of complete fairness and impartiality.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that given to any other party to this litigation. By the same token, the government is entitled to no less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

Yuri Lebedev and Trevon Gross have each pleaded not guilty to the charges against them. As a result of a plea of not guilty, the burden is on the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of testifying, or calling any witness, or locating or producing any evidence.

Even if either defendant has presented evidence in his defense, it is not his burden to prove himself innocent. It is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt.

Furthermore, the law presumes that the defendants -- the law presumes the defendants to be innocent of the charges against them. This presumption was with them when the trial

began and remains with each of them as you deliberate unless and until you are convinced that the government has proven that specific defendant's guilt beyond a reasonable doubt.

I have said that in order to convict either of the defendants on any of the charges in the indictment, the government is required to prove that charge as to that defendant beyond a reasonable doubt. The question that naturally arises is: What is a reasonable doubt? The words almost define themselves. It is doubt based in reason and arising out of the evidence in the case, or the lack of evidence. It is a doubt that a reasonable person has after carefully weighing all of the evidence in the case.

Reasonable doubt is a doubt that appeals to your reason, your judgment, your experience, and your common sense. If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you do have an abiding belief of either defendant's guilt as to any crime charged in this case, such a belief as a prudent person would be willing to act upon in important matters in the personal affairs of his or her own life, then you have no reasonable doubt, and under such circumstances it is your duty to convict that defendant of the particular crime in question.

On the other hand, if, after a fair and impartial consideration of all of the evidence, you can candidly and honestly say that you are not satisfied with the guilt of

either defendant as to any charge, that you do not have an abiding belief of that defendant's guilt as to that charge -- in other words, if you have such a doubt as would reasonably cause a prudent person to hesitate in acting in matters of importance in his or her own affairs -- then you have a reasonable doubt, and in that circumstance it is your duty to acquit that defendant of that charge.

One final word on this subject. Reasonable doubt is not whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. Nor is it sympathy for either of the defendants.

The law does not require that the government prove guilt beyond all possible doubt. Proof beyond a reasonable doubt is sufficient to convict.

The defendants, Yuri Lebedev and Trevon Gross, have been formally charged in what is called an indictment. As I instructed you as the outset of this trial, the indictment is simply a charge or accusation. It is not evidence. Each defendant begins trial with an absolutely clean slate and without any evidence against him. You must give no weight to the fact that an indictment has been returned against the defendants. What matters is the evidence that has been presented at the trial and the lack of evidence.

I will next summarize the charges in the indictment and then explain in detail the elements of each offense.

The defendants, Yuri Lebedev and Trevon Gross, are charged in a six-count indictment, although both defendants are not charged in every count. You will have a copy of the indictment with you in the jury room and you can read each count in its entirety. I'm going to provide only a brief summary now.

Count One charges Yuri Lebedev and Trevon Gross with conspiracy. The conspiracy charged in Count One has four objects or goals that are described in the indictment.

Count Two charges Yuri Lebedev with making and attempting to make corrupt payments with the intent to influence an officer of a financial institution.

Count Three charges Trevon Gross with accepting corrupt payments as an officer of a financial institution with the intent to be influenced.

Count Four charges Yuri Lebedev with conspiracy to commit wire fraud and bank fraud.

Count Five charges Yuri Lebedev with wire fraud.

Count Six charges Yuri Lebedev with bank fraud.

The indictment names as defendants Yuri Lebedev and Trevon Gross, who are on trial together. In reaching a verdict, however, you must bear in mind that guilt is individual. Your verdict as to each defendant must be determined separately with respect to him solely on the evidence, or lack of evidence, presented against him without

regard to the guilt or innocence of anyone else. Whether you find a particular defendant guilty or not guilty as to one offense should have no bearing on your verdict as to the other offenses charged.

In addition, some of the evidence in this case was limited to one defendant. Let me emphasize that any evidence admitted solely against one defendant may be considered only as against that defendant and may not in any respect enter into your deliberations as to the other defendant.

As I mentioned, the indictment contains six counts and charges two defendants. Both defendants are not named in every count.

You must, as a matter of law, consider each count of the indictment and each defendant's involvement in that count separately. You must return a separate verdict on each defendant for each count in which he is charged.

In reaching your verdict, bear in mind again that guilt is personal and individual. Your verdict of guilty or not guilty must be based solely upon the evidence against each defendant. The case against each defendant, on each count in which he is charged, stands or falls upon the proof or lack of proof against that defendant alone, and your verdict as to any defendant on any count should not control your decision as to any other defendant or any other count.

I'm going to break at this point before getting to the

descriptions of the counts beyond the summary that I've given. Take about a ten-minute break and return for the remainder of the charge.

Thank you so much.

(Jury excused)

(Continued on next page)

(In open court)

THE COURT: I'm ready to get the final exhibit list marked as a court exhibit. Do you have it? Ms. Choi, has it there. And, Ms. Nunez, what court exhibit number are we on?

Two, we believe. Court Exhibit 2.

Hand that to Ms. Nunez. I just want to get agreement from counsel that what's been handed to Ms. Nunez as the exhibit list is what's been agreed upon.

Ms. Choi.

MS. CHOI: Yes, your Honor.

THE COURT: Ms. Santillo.

MS. SANTILLO: I'm sorry. Could you repeat.

THE COURT: Sure. What's been handed to Ms. Nunez as the agreed-upon exhibit list is -- we're going to mark as a court exhibit. Do you agree to it?

MS. SANTILLO: Yes.

THE COURT: And Mr. Creizman.

MR. CREIZMAN: I do agree.

THE COURT: So we're marking that as Court Exhibit 2 and that is a court exhibit and will upon agreement go to the jury.

The laptop and materials that are going back.

MS. CHOI: We're finishing that right now. We're waiting for defense counsel to send us one e-mail.

I just note for the record, in case there's ever any

confusion with regard to DX-24. It's marked on the defense's exhibit list for the March 7 date, which is when the rest of the exhibits went in. But, obviously, we've all consented to it. I just wanted to note that for the record.

THE COURT: Thank you. So we'll take five minutes. I'll come back. I'll get agreement on the actual material so that as soon as -- let me just state what I'll do. I'll complete the charge. I'll call you to the sidebar to make sure if I've read anything wrong or something went haywire in reading the charge you have a final opportunity to request a correction of some kind.

Assuming not, I will come back to the jurors. I will thank and bid farewell to our four alternates and send them to -- and tell them to gather their belongings, say good-bye without discussing the case, and then be on their way. I will tell them that they remain part of the case with all of my instructions applying until they receive a call from Ms. Nunez on the chance that they could need to be called back so I'll be clear that they are not dismissed -- they are not excused, they are not done with the case until they hear from Ms. Nunez because we might still need them. But we'll, obviously, send them on their way before the jury begins its deliberations.

MR. CREIZMAN: I guess your Honor will give regular instructions, keep an open mind, don't look up the case.

THE COURT: To the alternates, yes. I will tell them

and do the truncated version -- I will tell them all of the instructions continue to apply until they hear from Ms. Nunez.

MS. CHOI: Your Honor, just for our own purposes I think today is an early day, is it 4:40?

THE COURT: It may not need to be. The juror who has the issue, the weather might mean that she doesn't need to leave at 4:40. So Ms. Nunez is going to extract her cellphone, have her check her messages to find out, and then take her cellphone back.

Let's clarify. Assuming, if it's 4:40, I tell them we'll bring them back in at 4:40 if they haven't completed their task and then dismiss them until Monday.

What I would suggest is otherwise to tell them that they should deliberate until they send a note indicating if they're continuing with their deliberations when they would like to stop. I do want to give them the option to continue should they want to.

Everybody comfortable with that?

MS. CHOI: Yes, your Honor.

MR. KLINGEMAN: Yes, your Honor.

MR. CREIZMAN: Yes.

THE COURT: Somebody can tell you later what I said.

MR. CREIZMAN: No, I know.

MS. CHOI: It was very emphatic, though.

THE COURT: Let's take a couple minutes. I'll see you

shortly.

Sorry, one more thing for prep purposes. Sorry. I came back.

You don't need to have done this yet but as soon as the jury starts deliberating I will ask for folks -- for some effort to prepare the testimony in the event that portions of the testimony -- so I think what that means is -- well what we want to be able to do is to do whatever you do electronically. But to the extent that we get a request for a particular individual's testimony, my general practice, unless there's objection, is to have you agree upon the testimony that's being requested, print it, and send it in.

MS. CHOI: So the only thing you would want to strip out is objections and sidebar conferences.

THE COURT: Right.

MS. CHOI: We can do that. And you want them by each witness separately?

THE COURT: What you might want to do is just anticipate the more likely requests and start on that in terms of redactions because sometimes there are disputes about what gets redacted. But I think to facilitate -- they'll come and they'll ask for testimony and then two hours later we send them the testimony --

MS. CHOI: So, we'll start with the cooperating witnesses, I presume, and the defendant, and then we'll work

our way.

THE COURT: I think that makes sense.

Unless anybody has any objection, it is my practice, rather than coming in and doing a read back, to send the printed testimony.

MS. CHOI: Okay. We'll get the paralegal started on that.

THE COURT: Thank you.

(Recess)

(Jury not present)

THE COURT: We now have conclusion on the materials?

MS. CHOI: No, your Honor. We just got an e-mail that was of an electronic copy of a document that needs to be loaded on the computer. The paralegals have gone back to deal -- oh, you mean the list, sorry.

The paralegals went back to deal with that. So they are getting it ready -- they're getting it ready during the charge. And they're starting on the redaction project.

THE COURT: We'll, they won't delay bringing back --

MS. CHOI: Correct. No. Michael knows. He understands that. They'll bring it back.

THE COURT: We're probably 30 minutes away or so from wanting to send it back.

MS. CHOI: No. She's talking about the exhibits.

The paralegals understand. That's why one of them is

back there dealing with it, so.

THE COURT: Because I've now asked both by order and orally four or five times for this moment to happen and it still hasn't happened.

MS. CHOI: Yes, your Honor. We're just dealing with the defense exhibits right now. It will happen. It will happen.

THE COURT: I want to be totally clear. It is my hope and expectation that when I finish reading this charge I can say to the jury, after the CSO is sworn in, that we will send back to them --

MS. CHOI: Your Honor, I will go back and deal with it myself.

We'll make sure that the -- I'll e-mail if there's an issue.

Do you guys have a sense of -- I mean I think we're going to start with the defendant's testimony and the two cooperating witnesses. Are there other witnesses that we should do after that in order?

I know that's not part of the deadline.

THE COURT: We're going to bring in the jury.

MR. KLINGEMAN: Your Honor I just want to note that Ms. Santillo is still not feeling well. She has come and gone as she needs to. I just want to advise the Court.

THE COURT: Thank you.

(Continued on next page)

(Jury present)

THE COURT: Thank you. We will return to the charge.

I'll now instruct you on the elements of the crimes with which the defendants are charged in the indictment. I'll first instruct you on the elements of the corrupt payment offenses charged in Counts Two and Three, which are two of the objects, or goals, of the conspiracy offense charged in Count One. I will then instruct you on the elements of conspiracy.

Count Two charges Yuri Lebedev with making or offering to make corrupt payments to an officer of a financial institution, specifically the defendant Trevon Gross, with the intent to influence him in connection with the business of a financial institution, specifically HOPE Federal Credit Union. In order to find Yuri Lebedev guilty of this crime, the government must prove the following elements beyond a reasonable doubt:

First, that Trevon Gross was an officer or director or employee of a financial institution as that term is defined under federal law;

Second, that the defendant gave or agreed to give or offered or promised something of value to Trevon Gross;

Third, that the defendant acted corruptly and with the intent to influence or reward Trevon Gross's decision in connection with any business or transaction of HOPE Federal Credit Union; and

Fourth, that the thing of value paid by the defendant had a value greater than $1,000.

The first element the government must prove beyond a reasonable doubt is that, at the time of the events alleged in the indictment, Trevon Gross was an officer or director or employee of a financial institution. In order to satisfy this element, the government must prove that HOPE Federal Credit Union was a credit union with accounts insured by the National Credit Union Share Insurance Fund, and that Trevon Gross was an officer or director or employee of HOPE Federal Credit Union.

The second element the government must prove beyond a reasonable doubt is that Yuri Lebedev gave or agreed to give or offered or promised something of value to Trevon Gross as alleged in the indictment.

The law makes no distinction between offering, promising, or actually giving a corrupt payment. The mere offer or promise of such a payment is just as much a violation of the statute as the actual giving of one.

It is not necessary that the government prove that the payment was made directly to Trevon Gross. If the payment was made corruptly, or was offered or promised to be made corruptly, to a third party, such as another person or entity, with intent to influence or reward Trevon Gross, that is sufficient to satisfy this element.

The third element the government must prove beyond a

reasonable doubt is not just that Yuri Lebedev gave or agreed to give or offered or promised something of value to Trevon Gross, but that he did so knowingly and corruptly and with the intent to influence or reward Trevon Gross in connection with any business or transaction of HOPE Federal Credit Union.

To act corruptly means to act voluntarily and deliberately with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means. This involves conscious wrongdoing, or as it sometimes has been expressed, a bad or evil state of mind. The motive to act corruptly is ordinarily a hope expectation of either financial gain or some other benefit to oneself or some profit or benefit to another.

The relevant question for your consideration with respect to Count Two is Yuri Lebedev's intent, not Trevon Gross's intent. In order to find Yuri Lebedev guilty, the government does not have to prove that Trevon Gross had a corrupt intent, corruptly accepted any payment, or that a payment corruptly influenced any business or transaction of HOPE Federal Credit Union. Nor is it necessary for the government to prove that Trevon Gross had the authority to perform the act that Yuri Lebedev allegedly corruptly sought for him to undertake. Also, if you find that Yuri Lebedev acted with the intent to reward Trevon Gross for a decision already made, it does not matter that the payment was not made

or offered until after the decision was made.

The fourth element the government must prove beyond a reasonable doubt is that the thing of value given or agreed to or offered or promised by Yuri Lebedev had a value greater than $1,000. The government need not prove the exact value of the thing of value as long as there is proof beyond a reasonable doubt that the value exceeded $1,000.

Now, Count Three of the indictment charges Trevon Gross with corruptly soliciting, demanding for the benefit of any person, accepting, or agreeing to accept payments as an officer of a financial institution with intent to be influenced or rewarded. In order to find Trevon Gross guilty of this crime, the government must prove the following elements beyond a reasonable doubt:

First, that Trevon Gross was an officer or director or employee of a financial institution;

Second, that Trevon Gross solicited, demanded, accepted, or agreed to accept something of value, either for his own benefit or the benefit of another;

Third, that Trevon Gross did so knowingly and corruptly, and with the intent to be influenced or rewarded in connection with any business or transaction of HOPE Federal Credit Union; and

Fourth, that the thing of value solicited, demanded, accepted or agreed to accept, had a value greater than $1,000.

I have already instructed on the meaning of these elements in discussing Count Two, and you should follow those instructions with respect to this count, Count Three.

With respect to the third element of Count Three, corrupt intent, remember that to act corruptly means to act voluntarily and deliberately with the bad purpose of accomplishing either an unlawful end or a result, or a lawful end or result by some unlawful method or means. Here, it is Trevon Gross's intent in accepting the payments that is the relevant question, not the intent of the person or persons offering or making the payments. Even if you find that payments were made to Trevon Gross with a corrupt intent, you may not find Trevon Gross guilty unless you find that he also acted with a corrupt intent.

Remember that it is Trevon Gross's intent -- remember that it is Trevon Gross's intent to be influenced or rewarded that matters, not the subsequent actions he undertook concerning HOPE Federal Credit Union or the subsequent actions of HOPE Federal Credit Union. In order to find Trevon Gross guilty, the government does not have to prove that the payment or offer of payment actually influenced any of Trevon Gross's decisions concerning HOPE Federal Credit Union. Also, if you find that Trevon Gross acted with the intent to be rewarded for a decision already made, it does not matter that the payment was not made or offered until after the decision was made.

Also, remember that in order to find Trevon Gross guilty, the government does not have to prove that Trevon Gross received the payments directly. If Trevon Gross corruptly solicited, demanded, anticipated or agreed to accept a payment on behalf of another person or entity with the intent to be influenced or rewarded, that is sufficient to find him guilty.

The corrupt payments statute charged in Counts Two and Three does not criminalize legitimate commercial and business practices. It only applies to payments made with a corrupt intent. Thus, the statute does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. Bona fide means in good faith or without deceit or fraud. If you find that either of the defendants made or accepted, or offered or agreed to make or accept, bona fide payments without corrupt intent, you must find that defendant not guilty on the count you are considering.

I'll now turn to the conspiracy offense charged in Count One.

Count One charges Yuri Lebedev and Trevon Gross with conspiring to violate certain federal laws. A conspiracy is a kind of criminal partnership -- an agreement or understanding between two or more persons to accomplish some unlawful purpose. The crime of conspiracy to violate federal law is an independent offense from the actual violation of any specific

federal law. Indeed, you may find either of the defendants guilty of conspiring to violate federal law even if you find that the crimes which were the objects of the conspiracy were never actually committed.

Count One charges Yuri Lebedev and Trevon Gross with conspiring with others, from in or about April 2014 to in or about 2015, to achieve four unlawful objectives in an effort to further the operations of Coin.mx or the Collectables Club: Number one, to make corrupt payments to Trevon Gross with the intent to influence Trevon Gross in connection with the business of HOPE FCU; number two, to have Trevon Gross receive or agree to receive corrupt payments with the intent to be influenced in connection with the business of HOPE FCU; number three, to obstruct an examination of HOPE FCU by the NCUA; and number four, to make false statements to the NCUA in connection with the NCUA's examinations of HOPE FCU.

As is clear from the indictment, the government has charged the defendants with what is called a multiobject conspiracy, that is, a conspiracy with more than one objective.

The first objective of the alleged conspiracy was to make corrupt payments to Trevon Gross with the intent to influence Trevon Gross in the business of HOPE Federal Credit Union, in violation of Title 18, United States Code, Section 215(a)(1).

The second object of the alleged conspiracy was to

have Trevon Gross receive or agree to receive the corrupt payments with the intent to be influenced in the business of HOPE Federal Credit Union, in violation of Title 18, United States Code, Section 215(a)(2).

The third object of the alleged conspiracy was to obstruct an examination of HOPE Federal Credit Union by the National Credit Union Administration, the NCUA, in violation of Title 18, United States Code, Section 1517.

The fourth object of the alleged conspiracy was to make false statements to the NCUA, in violation of Title 18, United States Code, Section 1001.

In order to find Yuri Lebedev or Trevon Gross guilty on Count One, you must find that the government has proven each of the following elements beyond a reasonable doubt as to that defendant:

First, that there was an agreement between two or more persons to commit one or more of the crimes that were the objects of the conspiracy charged in the indictment;

Second, that the defendant you are considering knowingly and willfully became a member of the conspiracy charged; and

Third, that any of the coconspirators knowingly committed at least one overt act in furtherance of the conspiracy.

I will now discuss each of these elements in more

detail.

The first element which the government must prove beyond a reasonable doubt is that two or more persons entered the unlawful agreement charged in Count One of the indictment -- that is, that two or more persons agreed to commit at least one of the four criminal objects charged in the indictment.

As I previously stated, a conspiracy is an agreement or undertaking between two or more persons to accomplish some unlawful purpose. To establish the existence of a conspiracy, however, the government is not required to show that two or more people sat around a table and entered into a formal contract. It's sufficient if two or more persons in any matter came to a common understanding to violate the law. Express language or specific words are not required to indicate agreement to or membership in a conspiracy. As I've already told you, it's not necessary that a conspiracy actually succeed in its purpose for you to conclude that it existed. Nevertheless, in determining whether two or more individuals have agreed to commit a crime, you may look at all of their conduct, including any acts done to carry out an apparent criminal purpose, and determine whether that conduct reflects an intent to carry out a common criminal purpose. The old saying, "Actions speak louder than words" applies here.

If, upon consideration of all of the evidence, direct

and circumstantial, you find that the government has proven beyond a reasonable doubt that there was a meeting of the minds or agreement between two more persons to commit one or more of the crimes that are the objects of the conspiracy charged in Count One, then proof of the existence of a conspiracy is established. Mere discussions about crimes or mere knowledge of crimes without an agreement to commit them is not a conspiracy. Further, an agreement to achieve a lawful goal is not the same as a criminal conspiracy -- two or more individuals must have agreed to commit a crime.

It is also not necessary for the government to prove that two or more individuals agreed to commit all four criminal objects of the conspiracy as charged in Count One of the indictment. An agreement to accomplish any one of the alleged objects is sufficient. But if you do not unanimously find beyond a reasonable doubt that all of the objects of the conspiracy were proven, you must be unanimous as to which object you do find proven. In other words, to return a verdict of guilty on Count One, you must reach agreement as to at least one object of the alleged conspiracy and find that the defendant in question knowingly and intentionally entered into an agreement to achieve that unlawful objective.

I have instructed you on the elements of the substantive bribery offenses charged in Counts Two and Three, which are the first two alleged objects of the conspiracy

charged in Count One. You should follow those instructions here.

I will now instruct you on the elements of the substantive offenses that are the third and fourth objects of the alleged conspiracy.

The third object of the conspiracy charged in Count One is to corruptly obstruct an examination of a financial institution, specifically, HOPE Federal Credit Union, by an agency of the United States with jurisdiction to conduct an examination, specifically, the National Credit Union Administration, NCUA, in violation of Title 18, United States Code, Section 1517. This crime has three elements:

First, that on or about the dates set forth in the indictment, an agency of the United States with jurisdiction to conduct an examination, in this case the NCUA, was, in fact, conducting an examination of a financial institution, specifically HOPE Federal Credit Union. In order to establish that HOPE Federal Credit Union was a financial institution, the government must prove that HOPE Federal Credit Union was a credit union with accounts insured by the National Credit Union Share Insurance Fund. I instruct you that the NCUA is an agency of the United States with jurisdiction to conduct an examination of a credit union with accounts insured by the National Credit Union Share Insurance Fund.

Second, that a defendant or a coconspirator knew that

the NCUA was conducting an examination of HOPE Federal Credit Union; and

Third, that a defendant or a coconspirator corruptly obstructed or attempted to obstruct the NCUA's examination.

The success of the endeavor to obstruct the NCUA's examination is not an element of the crime. Thus, it is sufficient if you find that a defendant or a coconspirator corruptly made any effort or did any act for the purpose of obstructing the NCUA's examination, even if the examination was not, in fact, obstructed. The word "corruptly" as used in the statute means simply having the improper motive or purpose of obstructing the examination.

The fourth object of the conspiracy charged in Count One is knowingly and willfully making materially false statements to the executive branch of the government of the United States, specifically, the National Credit Union Administration, NCUA, in violation of Title 18, United States Code, Section 1001. The crime has five elements:

First, that on or about the dates set forth in the indictment, a defendant or a coconspirator did one or more of the following:

Falsify, conceal, or cover up a fact. As used in the statute, the term "falsify" means to make an untrue statement which is untrue at the time made and is known to be untrue at the time made. To "conceal" means to withhold from another.

It requires some act to prevent detection of some fact the defendant was required to reveal. And to "cover up" means to hide from another. The government must prove, beyond a reasonable doubt, that the defendant had a legal duty to disclose the fact concealed or covered up. That was (a).

(b). Make a statement or representation. In this regard, the government need not prove that the defendants or a coconspirator physically made or otherwise personally prepared the statement in question. It is sufficient if the defendants or a coconspirator caused the statement to have been made. Under this statute, there is no distinction between written and oral statements.

(c). Use a writing or document. In this regard, the government need not prove that the defendants or a coconspirator personally prepared the writing or document. It is sufficient to satisfy this element if you find that the defendants or a coconspirator caused the writing or document to be used.

Second, if the defendant or a coconspirator did one or more of the acts in the first element, that the act or acts were done as follows:

(a). Falsify or conceal or cover up by trick, scream or device. This language is almost self-explanatory. A scheme is a plan for the accomplishment of an object. A trick or device is a deceptive act or strategy calculated to deceive

other persons.

(b). Make a statement or representation that was false, fictitious or fraudulent.

(c) use a writing or document containing a statement or entry that was false, fictitious or fraudulent.

A statement or representation or entry is "false" or "fictitious" if it was untrue when made, and known at that time to be untrue by the person making it or causing it to be made. A statement or representation or entry is "fraudulent" if it was untrue when made and was made or caused to be made with the intent to deceive the NCUA.

Third, that the fact falsified or concealed or covered up, or the false, fictitious, or fraudulent statement or representation, or the false, fictitious or fraudulent statement or entry contained in a writing or document was material. A fact or statement or representation or entry is "material" if it has a natural tendency to influence or is capable of influencing the NCUA's decisions or activities. However, proof of actual reliance on the fact or statement or representation or entry by the NCUA is not required.

Fourth, that a defendant or a coconspirator acted knowingly and willfully. An act is done knowingly if it is done purposely and voluntarily as opposed to mistakenly or accidentally. An act is done willfully if it is done with intention to do something the law forbids, a bad purpose to

disobey the law, and only with respect to concealment with specific intent to fail to do something the law requires to be done.

Fifth, and finally, that the falsification, concealment or coverup was with respect to a matter within the jurisdiction of the government of the United States. I charge you that the NCUA is a department of the United States government. To be within the jurisdiction of the government of the United States means that the statement must concern an authorized function of that federal department or agency, in this case, the NCUA. It is not necessary for the government to prove that the defendants had actual knowledge that the false statement was to be utilized in a matter that was within the jurisdiction of the NCUA. It is sufficient to satisfy this element if you find that the false statement was made with regard to a matter within the jurisdiction of the NCUA.

I instruct you that under the false statements statute, it is not necessary for the government to prove that the NCUA was, in fact, misled as a result of the action of the defendants. It does not matter that the NCUA was not misled, or even that it knew of the misleading or deceptive act, should you find that the act occurred. These circumstances would not excuse or justify a concealment undertaken, or a false, fictitious or fraudulent statement made, or a false writing or document submitted willfully and knowingly about a matter

within the jurisdiction of the NCUA.

If you find the government has proven beyond a reasonable doubt that the conspiracy alleged in Count One existed, you must then determine whether the government has proven beyond a reasonable doubt that Yuri Lebedev and Trevon Gross knowingly and willfully joined that conspiracy.

In determining whether either defendant became a member of the conspiracy, you must determine not only whether he participated in it, but also whether he did so with knowledge of its illegal objective. Did the specific defendant join the conspiracy with an awareness of its aim and purpose and with the specific intent of furthering that purpose? Knowledge is a matter of inference from facts proved. To have guilty knowledge, a defendant need not know the full extent of the conspiracy or even who all of the coconspirators are. Similarly, a defendant need not know all of the activities of the conspiracy. Indeed, a single act may be enough to bring one -- to bring one within the membership of the conspiracy, provided that the defendant was aware of the conspiracy and knowingly associated himself with its criminal aims. It does not matter whether a given defendant's role in the conspiracy may have been more limited than or different in nature from the roles of his coconspirators, provided he was himself a participant.

Of course, mere presence at a scene of a crime, or

mere association with one or more members of a conspiracy, even coupled with awareness that those other people are acting unlawfully, does not make a defendant a member of the conspiracy. Further, the fact that the acts of the defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy does not make the defendant a member of the conspiracy. Nor is knowledge of or acquiescence in a conspiracy without participation sufficient. As I have stressed, what is necessary is that the defendant in question participate in a conspiracy with knowledge of its unlawful purpose and with intent to aid in the accomplishment of that end.

It's also not necessary that the defendant receive or even anticipate any financial benefit from participating in a conspiracy as long as he participated in it in the way I have explained. That said, while proof of a financial interest in the outcome of a scheme is not essential, if you find that the defendant had such an interest, that is a factor which you may properly consider in determining whether or not he was a member of the conspiracy charged in the indictment.

Finally, as I have said before, you must separately determine, as to each defendant, whether he was a member of the conspiracy.

Let me now turn to the third element of the conspiracy charged in Count One, the requirement of an overt act.

Count One requires the government to prove beyond a reasonable doubt that at least one coconspirator knowingly committed at least one overt act in furtherance of the conspiracy. The overt act element requires the government to show something more than mere agreement; it must show that some overt step or action was taken by at least one of the conspirators in furtherance of the conspiracy. In other words, the government must show that the agreement went beyond the mere talking stage. It must show that at least one of the conspirators actually did something in furtherance of the conspiracy.

In order for the government to satisfy the overt act requirement, it is not necessary for the government to prove any of the specific overt acts alleged was committed. Nor does the government have to prove that it was Yuri Lebedev or Trevon Gross who committed the overt act. It is sufficient for the government to show that any of the members of the conspiracy knowingly committed some overt act in furtherance of the conspiracy. Further, the overt act need not be one that is alleged in the indictment. Rather, it can be any overt act that is substantially similar to those acts alleged in the indictment, if you are convinced beyond a reasonable doubt that the act occurred while the conspiracy was still in existence and that it was done in furtherance of the conspiracy as described in the indictment. In addition, you need not be

unanimous as to which overt act you find to have been committed. It is sufficient as long as all of you find that at least one overt act was committed by one of the conspirators in furtherance of the conspiracy.

Finally, you should bear in mind that the overt act, standing alone, may be an innocent lawful act. Frequently, however, an apparently innocent act sheds it harmless character if it is a step in carrying out, promoting, aiding, or assisting the conspiratorial scheme.

(Continued on next page)

THE COURT: (Continuing) When people enter into a conspiracy to accomplish an unlawful end, they become agents or partners of one another in carrying out the conspiracy. Accordingly, the reasonably foreseeable acts, declarations, statements, and omissions of any member of the conspiracy and in furtherance of the common purpose of the conspiracy are deemed under the law to be the acts of all of the members. All of the members are responsible to such acts, declarations, statements, and omissions.

If you find beyond a reasonable doubt that the specific defendant you are considering knowingly and willfully participated in the conspiracy charged in the indictment, then any acts, done or statements made in furtherance of the conspiracy by persons also found by you to have been members of that conspiracy may be considered against that defendant. This is so even if such acts were done and statements were made in the defendant's absent and without his knowledge. However, before you may consider the statements or acts of a coconspirator, in deciding the issue of a defendant's guilt, you must first determine that the acts and statements were made during the existence and in furtherance of the unlawful scheme. If the acts were done or the statements made by someone whom you do not find to have been a member of the conspiracy at the time of the acts or statements, or if they were not done or said in furtherance of the conspiracy, they may be considered

by you as evidence only against the member who said or did that.

A defendant has raised the defense that he was not a member of the conspiracy because he withdrew from the conspiracy prior to the commission of the first overt act in furtherance of the conspiracy. Once a person joins a conspiracy, that person remains a member until he withdraws from it. Any withdrawal must be complete, and it must be done in good faith. But it is a defense to the charge of conspiracy that the defendant withdrew from the conspiracy before the commission of the first overt act in furtherance of the conspiracy. A person can withdraw from a conspiracy by taking some affirmative steps to terminate or abandon his participation in, and efforts to promote, the conspiracy. In order to withdraw from the conspiracy, a defendant must take some definite, decisive, and affirmative action to disavow himself from the conspiracy or to defeat the goal or purpose of the conspiracy.

Merely stopping activities or cooperation with the conspiracy or merely being inactive for a period of time is not sufficient to constitute the defense of withdrawal. In deciding if the defendant took a step to disavow or defeat the conspiracy, you may consider whether he told others in the conspiracy that his participation had ended, whether the defendant took steps to correct prior assistance to the group,

and whether he attempted to remedy any past act or attempted to prevent any further progress of the conspiracy.

It is not sufficient to constitute the defense of withdrawal for a defendant to sever ties with some, but not all members of the conspiracy. Furthermore, a defendant must not take any subsequent acts to promote the conspiracy, such as steps to conceal the conspiracy, and must not receive any additional benefits from the conspiracy. The defendant has the burden of proving that he withdrew from the conspiracy by a preponderance of the evidence.

To prove something by a preponderance of the evidence means to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more convincing. In determining whether a defendant has proven that he withdrew from the conspiracy, you may consider all relevant, admissible evidence. If the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve this question against the defendant. It is important to remember, however, that the fact that a defendant has raised this defense does not relieve the government of its burden of proving that there was an agreement that the defendant knowingly and voluntarily joined the conspiracy and that an overt act was committed in furtherance of the conspiracy. Those are things that the government still must prove beyond a reasonable doubt

in order for you to convict the defendant of the crime of conspiracy.

In this case, the defendants contend that as to Count One, the government's proof fails to show the existence of only one overall conspiracy. Rather, they claim that there were actually several separate and independent conspiracies with various groups of members. Whether there existed a single unlawful agreement, or many such agreements or indeed no agreement at all is a question of fact for you, the jury, to determine in accordance with the instructions I'm about to give you.

When two or more people join together to further one common unlawful design or purpose, a single conspiracy exists. By way of contrast, multiple conspiracies exist when there are separate unlawful agreements to achieve distinct purposes.

Proof of several separate and independent conspiracies is not proof of the single overall conspiracy charged in Count One unless one of the conspiracies proved happens to be the single conspiracy described in Count One of the indictment.

You may find that there was a single conspiracy despite the fact that there were changes in personnel by additions of new members, or loss of old members, or changes in activities or both, so long as you find that some of the coconspirators continued to act for the entire duration of the conspiracy for the purposes charged in Count One of the

indictment. The fact that the members of a conspiracy are not always identical does not necessarily imply that separate conspiracies existed.

On the other hand, if you find that the conspiracy charged in Count One did not exist, you cannot find any defendant guilty of the single conspiracy charged in Count One. This is so even if you find that some conspiracy other than the one charged in Count One existed, even though the purposes of both conspiracies may have been the same, and even though there may have been some overlap in membership.

Similarly, if you find that a particular defendant was a member of another conspiracy and not the one charged in Count One, then you must acquit the defendant of the conspiracy charged in Count One.

Therefore, what you must do is determine whether the conspiracy charged in Count One existed. If it did, you must then determine the nature of the conspiracy and who were its members.

You have seen and heard evidence that sometime after a meeting involving Trevon Gross, Yuri Lebedev, and other members of the Collectables Club, held on or about November 22nd, 2014, there was a falling-out between Trevon Gross on the one hand and the Collectables Club members on the other hand. It is up to you to determine, based on all of the evidence, when precisely that falling-out occurred.

You may consider against both Yuri and Trevon Gross evidence of acts and statements by the defendants and individuals affiliated with HOPE FCU, the Collectables Club, and Kapcharge that occurred before the date of the falling-out between Trevon Gross and the Collectables Club. Evidence of acts and statements by various individuals that occurred after the date of the falling-out between Trevon Gross and the Collectables Club may be considered in the following ways:

Acts and statements by the defendants and members of the Collectables Club regarding the November 22nd meeting or the relationship between Trevon Gross and the Collectables Club that occurred after the date of the falling-out between Trevon Gross and the Collectables Club may be considered against both Yuri Lebedev and Trevon Gross.

Acts and statements by Yuri Lebedev and other members of the Collectables Club regarding the NCUA about HOPE FCU that occurred after the date of the falling-out between Trevon Gross and the Collectables Club may be considered against both Yuri Lebedev and Trevon Gross.

Acts and statements by Yuri Lebedev and other members of the Collectables Club regarding efforts to take control of credit unions other than HOPE Federal Credit Union and starting a new credit union of their own, including eCommerce PMA Federal Credit Union, that occurred after the date of the falling-out between Trevon Gross and the Collectables Club: (a)

may be considered against Yuri Lebedev only for whether the conspiracy charged in Count One existed and who its members were, but not for whether Yuri Lebedev knowingly participated in the conspiracy; and (b) may not be considered against Trevon Gross.

Acts and statements by Trevon Gross, Charles Blue, and other individuals affiliated with HOPE FCU, and Mark Francis, Shoula Cohen, and other individuals affiliated with Kapcharge that occurred after the date of the falling-out between Trevon Gross and the Collectables Club: (a) may be considered against Trevon Gross; and (b) may be considered against Yuri Lebedev only for whether the conspiracy charged in Count One existed and who its members were, but not for whether Yuri Lebedev knowingly participated in that conspiracy.

Now, to Count Four. Count Four alleges that Yuri Lebedev conspired to commit wire and bank fraud. Counts Five and Six allege that Yuri Lebedev committed the substantive crimes of wire fraud and bank fraud respectively. Trevon Gross is not charged in Counts Four through six.

I have already explained the elements of conspiracy when I discussed Count One, and you should follow those instructions with respect to the conspiracy charged in Count Four with one exception. Unlike the conspiracy charged in Count One, you do not have to find that any overt act was committed by any conspirator in furtherance of the conspiracy

charged in Count Four. In other words, the law does not require the government to prove that any overt act was committed in order to prove a conspiracy to commit wire fraud or bank fraud. I remind you, however, that if you do not unanimously find that both wire fraud and bank fraud were objects of the conspiracy, in order to convict Yuri Lebedev on Count Four, you must unanimously agree that either wire fraud or bank fraud was an object of the conspiracy.

I will now explain the elements of wire fraud and bank fraud, which are the two objects of the conspiracy charged in Count Four.

So wire fraud, Count Five, charges Yuri Lebedev with wire fraud. In order to find the defendant guilty of this crime, the government must prove the following elements beyond a reasonable doubt:

First, that the scheme or artifice to defraud others of money or property by materially false and fraudulent pretenses, which is charged in Count Five of the indictment, existed in or about the times alleged in the indictment;

Second, that the defendant knowingly, willfully, and with the specific intent to defraud participated in the scheme or artifice with knowledge of its fraudulent nature;

And, third, that in execution of the scheme, the defendant used or caused the use by others of interstate or international wires.

The first element the government must prove beyond a reasonable doubt is the existence of a scheme or artifice to defraud others of money or property by means of false or fraudulent pretenses, representations, or promises. I will now define some of these terms for you.

A scheme or artifice is simply a plan that is designed to accomplish an objective.

Fraud is a broad term. It includes all the possible means by which a person seeks to gain some unfair advantage over another by false representations, false suggestion, false pretenses, concealment of the truth, or deliberate disregard for the truth. Thus, a scheme or artifice to defraud is any plan, device, or course of action to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises. It is a plan to deprive another of money or property by trick, deceit, or swindle.

Here, the government alleges that the scheme to defraud was carried out by making false and fraudulent statements and representations to financial institutions. A statement or representation is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made. A representation or statement is fraudulent if it was false and the defendant made it with the intent to deceive.

The false or fraudulent representation or concealment

in a wire fraud scheme must relate to a material fact or matter. A material fact is one you would reasonably expect to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision. This means that if you find a particular statement of fact to have been false, you must also determine whether the statement was one that a reasonable person would have considered important in making his or her decision. To find an unlawful statement or representation material, you must conclude that the statement or representation was one that was capable of influencing the decision-maker to whom it was directed, here a financial institution, and was intended by the defendant to influence the financial institution's decision. It does not matter whether the financial institution actually relied on the misrepresentation. However, the misrepresentation had to be capable of influencing the financial institution and intended by the defendant to influence the financial institution, whether it influenced the financial institution or not.

The government is not required to establish that anyone actually relied on any false or fraudulent statement or representation. Rather, the statement or representation merely had to be capable of influencing the financial institution. Whether the financial institution was actually influenced or not is of no moment.

In order to establish a scheme to defraud, the

government must also prove that the alleged scheme contemplated depriving the financial institution of money or property. In this regard, a person is not deprived of money or property only when someone directly takes money or property from the person, although that is obviously one way that a person or entity can be so deprived.

A person can also be deprived of money or property when that person is provided false or fraudulent information that, if believed, would prevent the person from being able to make informed economic decisions about what to do with his or her money or property. In other words, a person is deprived of money or property when that person is deprived of the right to control the money or property.

Because the government need only show that a scheme to defraud existed, not that it succeeded, it is not necessary for the government to prove that the financial institutions actually lost money or property as a result of the scheme. For you to find Yuri Lebedev guilty, however, the government must prove that such a loss was contemplated by the defendant. That is, to carry its burden, the government must prove that the defendant contemplated and intended doing harm to a victim - that he intended to do something more than merely deceive the financial institutions.

In considering whether contemplation of the required loss was proved by the government, keep in mind that the loss

of the right to control money or property constitutes deprivation of money or property only when the scheme, if it were to succeed, would result in economic harm to the victim. If all the government proves is that under the scheme, it was contemplated that the financial institutions would enter into transactions they would otherwise not have entered into, without proving that the financial institutions would thereby have suffered economic harm, then the government will not have met its burden of proof.

A scheme to defraud need not be shown by direct evidence, but may be established by all the circumstances and facts in the case.

Finally, it does not matter whether the financial institutions might have discovered the fraud had they probed further. If you find that a scheme existed, it's irrelevant whether you believe that the victim was careless, gullible, or even negligent.

The second element the government must prove beyond a reasonable doubt is that Yuri Lebedev participated in a scheme to defraud knowingly, willfully, and with specific intent to defraud. To participate in a scheme means to engage in it by taking some affirmative step to help it succeed. I've already instructed you on the meaning of knowingly and willfully, and you should follow those instructions here.

To act with intent to defraud means to act knowingly

and with the specific intent to deceive for the purpose of causing some financial harm or deprivation of property to another. The government need not prove that any intended victim was actually harmed, only that such harm was contemplated.

The question of whether a person acted knowingly, willfully, and with the intent to defraud is a question of fact for you to determine like any other fact question. This question involves one's state of mind.

Science has not yet invented a way for us to look inside someone's head to see what he is thinking, and intending, and knowing. Direct proof of knowledge, willfulness and fraudulent intent is almost never available. Rarely is it the case that a person wrote or stated that as of a given time in the past, he committed an act with fraudulent intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence based upon a person's outward manifestations, words, conduct, and acts taken in light of all of the surrounding circumstances that are disclosed by the evidence, together with the rational or logical inferences that may be drawn from them.

What is referred to as drawing inferences from circumstantial evidence is no different from what people normally mean when they say, "use your common sense." Using

your common sense means that when you come to decide whether the defendant possessed or lacked an intent to defraud, you need not limit yourself to just what the defendant said, but you may also look at what the defendant did and what others did in relation to the defendant, and, in general, to everything that occurred.

Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime must be proven beyond a reasonable doubt.

In order to sustain the charges against Yuri Lebedev, the government must prove beyond a reasonable doubt that the defendant participated in the alleged scheme with an understanding of its fraudulent or deceptive character and with the intent to help it succeed.

That said, there are certain things that the government need not prove in order to meet its burden. It need not prove that the defendant participated in or even knew about all of the operations of the scheme. It need not prove that the defendant originated or invented the scheme or participated in it from its inception. A person who begins to participate in a scheme after it begins is just as guilty as a person who participates from the beginning, as long as the person who joins at a later point becomes aware of the scheme's general purpose and operation and acts intentionally to further its unlawful goal or goals. Finally, the government need not prove

that the defendant participated in the scheme to the same degree as other participants.

The third element the government must prove beyond a reasonable doubt is the use of an interstate or international wire communication in furtherance of the scheme to defraud. The wire communication must pass between two or more states as, for example, an email sent from New York to Florida, or it must pass between the United States and a foreign country as, for example, an email sent from New York to London. A wire communication also includes a wire transfer of funds between banks in different states or between a bank in the United States and a bank in a foreign country.

The use of wires need not itself be a fraudulent representation. It must, however, further or assist in the carrying out of the scheme to defraud. It is not necessary for Yuri Lebedev to be directly or personally involved in the wire communication, as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which Yuri Lebedev is accused of participating.

In this regard, it is sufficient to establish this element of the crime if you find that Yuri Lebedev caused the wires to be used by others. This does not mean that the defendant must specifically have authorized others to make the telephone call, send the email, or transfer the funds. When one does an act with knowledge that the use of the wires will

follow in the ordinary course of business, or where such use of the wires can reasonably be foreseen, even though not actually intended, then a person causes the wires to be used.

Count Six charges Yuri Lebedev with bank fraud. In order to find the defendant guilty of this crime, the government must prove the following elements beyond a reasonable doubt:

First, that there was a scheme to obtain money or property owned by or under the custody or control of a bank by means of materially false or fraudulent pretenses, representations, or promises as charged in the indictment;

Second, that the defendant executed or attempted to execute the scheme with the intent to obtain money or property owned or under the control or custody of the bank;

And, third, that at the time of the execution of the scheme, the bank had its deposits insured by the Federal Deposit Insurance Corporation.

The first element that the government must prove beyond a reasonable doubt is that there was a scheme to obtain money or property owned by or under the custody or control of a bank by means of false or fraudulent pretenses, representations, or promises, as described in the indictment.

I have instructed you on the meaning of scheme, and you should follow that instruction here.

A representation is fraudulent if it were falsely made

with the intent to deceive. Deceitful statements of half-truth, the concealment of material facts, and the expression of an opinion not honestly entertained may constitute false or fraudulent representations under the statute.

The deception need not be premised upon spoken or written words alone, however. The arrangement of the words or the circumstances in which they are used may convey a false and deceptive appearance. If there is intentional deception, the manner in which it is accomplished does not matter.

In addition, the fraudulent representation must relate to a material fact or matter. I have previously instructed you on the meaning of material, and you should follow that instruction here.

The second element the government must prove beyond a reasonable doubt is that the defendant executed or attempted to execute the scheme knowingly, and willfully, and with the intent to obtain money or funds owned by or under the custody or control of the bank.

I have already instructed you on the meaning of knowingly and willfully, and you should follow those instructions here.

I remind you that the ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon a person's outward

manifestations, his words, his conduct, his acts, and all the surrounding circumstances disclosed by the evidence, and the rational or logical inferences that may be drawn therefrom.

Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime charged must be established beyond a reasonable doubt.

The last element the government must prove beyond a reasonable doubt is that the relevant bank was insured by the Federal Deposit Insurance Corporation at the time of the execution of the alleged scheme to defraud. As to this last element, there is no issue, since a stipulation was entered into and read to you in which the parties agreed that the relevant banks were insured by the Federal Deposit Insurance Corporation at the time in question.

Furthermore, it is not necessary for the government to prove that the defendant knew the identity of a particular bank or that the defendant knew that the bank was insured by the FDIC. It must only prove that the defendant intended to obtain money or funds owned by or under the custody or control of a bank by means of false or fraudulent pretenses, representations, or promises.

This concludes my instructions on the crimes charged in the indictment, but before I move on to my remaining instructions, I want to now instruct you on the concept of

conscious avoidance.

I instructed that in order to find the defendants guilty on the counts in which they are charged, you must find that they acted knowingly in various respects. In determining whether a particular defendant acted knowingly, you may consider whether that defendant deliberately closed his eyes to what otherwise would have been obvious to him. That is what the phrase "conscious avoidance" refers to.

As I told you before, acts done knowingly must be a product of a person's conscious intention. They cannot be the result of carelessness, negligence, or foolishness. A defendant may not, however, willfully and intentionally remain ignorant of a fact material and important to his own conduct in order to escape the consequences of criminal law. We refer to this notion of intentionally blinding yourself to what is staring you in the face as conscious avoidance.

An argument by the government of conscious avoidance is not a substitute for proof. It's simply another factor that you, the jury, may consider in deciding what a defendant knew. Thus, if you find beyond a reasonable doubt that a particular defendant was aware that there was a high probability that a fact was so, but that the defendant deliberately avoided confirming this fact, such as by purposely closing his eyes to it or intentionally failing to investigate it, then you may treat this deliberate avoidance of positive knowledge as the

equivalent of knowledge.

However, if you find that the defendant had an actual good-faith belief that the particular fact was true, he may not be convicted.

With respect to the conspiracy counts, you must also keep in mind that there is an important difference between intentionally participating in the conspiracy on the one hand and knowing the specific object of the conspiracy on the other. You may consider conscious avoidance in deciding whether a defendant knew the objective of a conspiracy; that is, whether a defendant reasonably believed that there was a high probability that a goal of the conspiracy was to commit the crime charged as the object of that conspiracy and deliberately avoided confirming that fact, but participated in the conspiracy anyway.

But conscious avoidance cannot be used as a substitute for finding that a defendant intentionally joined the conspiracy in the first place. It is logically impossible for a defendant to intend and agree to join a conspiracy if he does not actually know it exists, and that is the distinction I am drawing.

In sum, if you find that a particular defendant believed there was a high probability that a fact was so, and that the defendant deliberately and consciously avoided learning the truth of that fact, you may find that the

defendant acted knowingly with respect to that fact.

However, if you find that the defendant actually believed the fact was not so, then you may not find that he acted knowingly with respect to that fact.

As to each count, I have instructed you as to what state of mind the government must prove each defendant had to be guilty of that crime. You are to assess each count and defendant separately, and in each case, review the instructions as to that specific count.

Nevertheless, let me advise you that a defendant's good faith is a complete defense to all of the charges in the case. If a defendant believed in good faith that he was acting properly, even if he was mistaken in that belief, and even if others were ultimately injured by his conduct, contrary to his intention, there would be no crime.

The burden of establishing criminal intent and lack of good faith rests upon the government. A defendant is under no burden to prove his good faith; rather, as to each count in the indictment, the government must prove bad faith as to each defendant beyond a reasonable doubt.

In connection with the substantive crimes charged in Count Two, Five, and Six, Yuri Lebedev is charged with committing certain criminal acts and also with aiding and abetting the commission of those acts. As to each of those counts, the defendant can be convicted either if he committed

the crime himself, or if the government proves beyond a reasonable doubt that he aided and abetted the commission of the crime by one or more other persons.

A person who aids and abets another in committing an offense is just as guilty of that offense as if he had committed it himself. Therefore, if you find that the government has proven beyond a reasonable doubt that another person actually committed a crime with which Yuri Lebedev is charged in the indictment and proved that Yuri Lebedev aided and abetted that person in the commission of the offense, then you may find him guilty of that crime.

In order to convict on an aiding and abetting theory, you must first find that another person has committed the crime charged. Obviously, the defendant cannot be convicted of aiding and abetting a criminal act of another if no crime was actually committed by the other person.

In other words, if you find that no one committed the crimes listed in the indictment under Counts Two, five, and six, then you cannot consider the possibility that the defendant aided or abetted in the commission of any of those offenses.

But if you do find that a crime was committed, then you must consider whether the government has proved that the defendant aided or abetted the commission of that crime.

In order to aid and abet another in committing a

crime, it is necessary that the government prove that the defendant willfully and knowingly associated himself in some way with the crime, and that he willfully and knowingly sought by some act to help make the crime succeed. The intent necessary to support a conviction for aiding and abetting goes beyond mere knowledge by the defendant that his action would tend to advance some nefarious purpose of the principal. Rather, the government must prove that the defendant engaged in some affirmative conduct or overt act for the specific purpose of bringing about the crime described in the indictment.

In sum, to determine whether Yuri Lebedev aided and abetted the commission of the crime you are considering, the government must prove that the defendant: (1) participated in the crime charged as something he wished to bring about; (2) associated himself with the criminal venture knowingly, deliberately, and willfully; and, (3) intended by his actions to make the criminal venture succeed.

If the government has proved these three things beyond a reasonable doubt, then the defendant is an aider and abettor and guilty of the crime charged.

If the government's proof has failed to prove these three things, then the defendant is not an aider and abettor, and you must find him not guilty of the crime charged.

In addition to the foregoing elements I've described for you, it is also necessary for you to decide, as to each

count, whether any part of the offense reached within this district, the Southern District of New York. The Southern District of New York comprises the following counties: Manhattan, the Bronx, Westchester, Dutchess, Putnam, Rockland, Orange, and Sullivan. This is called venue. Venue means place or location.

Venue must be examined separately for each count in the indictment. Venue on one count does not establish venue on another count, though if applicable, you may rely on the same evidence to establish venue on multiple counts.

As to the conspiracy charges, the government need not prove that any crime was completed in this district or that the defendants or any of their coconspirators were physically present here. Rather, venue is proper in this district if any of the defendants or coconspirators caused any act or event to occur in this district in furtherance of the offense, and it was reasonably foreseeable to the defendant that you are specifically considering that the act would take place in the Southern District of New York.

As to the substantive counts; that is, the nonconspiracy counts, the government again need not prove that any crime was completed in this district or that the defendant in question was physically present here. Rather, venue is proper in this district provided that any act in furtherance of the essential conduct of the crime took place in the Southern

District of New York. Again, the defendant you are considering need not have physically intended to cause an act or event to happen in this district or even know that he was causing an act or event to happen here as long as it was reasonably foreseeable to that specific defendant that such act would occur in this district, and it, in fact, occurred.

On the issue of venue, and this alone, the government need not prove venue beyond a reasonable doubt, but only by a preponderance of the evidence.

A preponderance of the evidence means more likely than not. The government, which does bear the burden of proving venue, has satisfied that burden as to venue if you conclude that it is more likely than not that some act or communication in furtherance of each charged offense occurred in the Southern District of New York, and it was reasonably foreseeable to each defendant that the act would so occur.

If, on the other hand, you find the government has failed to prove the venue requirement as to a particular offense, then you must acquit the defendant of that offense, even if all other elements of the offense are proven.

The indictment alleges that certain conduct occurred on or about various dates or during various time periods. It's not necessary, however, for the government to prove that any conduct alleged occurred exactly on such dates or throughout any such time periods. As long as the conduct occurred around

any dates or within any specific time periods the indictment alleges it occurred, that is sufficient.

I turn now to some general instructions. There are two types of evidence that you may properly use in reaching your verdict. One type of evidence is direct evidence. One kind of direct evidence is a witness' testimony about something the witness knows by virtue of her or his own senses, something the witness has seen, felt, touched, or heard. Direct evidence may also be in the form of exhibit.

The other type of evidence is circumstantial evidence. Circumstantial evidence is evidence that tends to prove one fact by proof of other facts. Now, there's a simple example of circumstantial evidence that is often used in this courthouse.

Assume that when you came into the courthouse this morning, the sun was shining, and it was a nice day. Assume that there are blinds on the courtroom windows that are drawn, and that you can't look outside. As you're sitting here, someone walks in with an umbrella that's dripping wet, and someone else walks with a raincoat that's also dripping wet.

Now, you can't look outside the courtroom, and you can't see whether or not it's raining, so you have no direct evidence of that fact, but on the combination of the facts that I've asked you to assume, it would be reasonable and logical for you to conclude that between the time you arrived at the courthouse and the time these people walked in, it had started

to rain.

That's all there is to circumstantial evidence. You infer on the basis of reason, and experience, and common sense, from an established fact, the existence or nonexistence of some other fact.

Many facts, such as a person's state of mind, can only rarely be proved by direct evidence. Circumstantial evidence is of no less value than direct evidence. It is a general rule that the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting the defendant, you, the jury, must be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

During the trial, and as I've given these instructions, you've heard and will hear the term "inference."

For instance, in their closing arguments, the attorneys have asked you to infer, based on your reason, experience, and common sense, from one or more established facts, the existence of some other fact. I have instructed you on circumstantial evidence and that it involves inferring a fact based on other facts, your reason, and common sense.

What is an inference? What does it mean to infer something? An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists based on another fact that you're satisfied exists.

There are times when different inferences may be drawn from facts, whether proven by direct or circumstantial evidence. The government asks you to draw one set of inferences while the defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion that you, the jury, are permitted, but not required to draw, from the facts that have been established by either direct or circumstantial evidence.

In drawing inferences, you should exercise your common sense. Therefore, while you're considering the evidence presented to you, you may draw, from the facts that you find to be proven, such reasonable inferences as would be justified in light of your experiences.

Some inferences, however, are impermissible. You may not infer that a defendant is guilty of participating in criminal conduct if you find merely that he was present at the time the crime was being committed and had knowledge that it was being committed. Nor may you use evidence that I've instructed you was admitted for a limited purpose for any inference beyond that limited purpose.

In addition, you may not infer that a defendant is guilty of participating in criminal conduct merely from the

fact that he associated with other people who were guilty of wrongdoing or merely because he has or had knowledge of the wrongdoing of others.

Here, again, let me remind you that whether based upon direct or circumstantial evidence or upon the logical, reasonable inferences drawn from other evidence, you must be satisfied of the guilt of each defendant you are considering beyond a reasonable doubt before you may convict that defendant of any of the crimes charged.

You have had the opportunity to observe the witnesses. It is your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of the witnesses.

How do you evaluate the credibility or believability of the witnesses? The answer is that you use your common sense, judgment, and experience.

Common sense is your greatest asset as a juror. You should ask yourself: Did the witness impress you as honest, open, and candid? Or did the witness appear evasive as though the witness was trying to hide something? How responsive was the witness to the questions asked on direct examination and on cross-examination? Consider the witness' demeanor, manner of testifying, and accuracy of the witness' recollection. In addition, consider how well the witness recounted what was heard or observed, as the witness may be honest, but mistaken.

If you find that a witness is intentionally telling a falsehood, that's always a matter of importance that you should weigh carefully. If you find that any witness has lied under oath at this trial, you should view the testimony of such a witness cautiously and weigh it with great care.

You may reject the entirety of the witness' testimony, part of it, or none of it. It's for you to decide how much of a witness' testimony, if any, you wish to credit.

A witness may be inaccurate, contradictory, or even untruthful in some respects, and, yet, entirely believable and truthful in other respects. It is for you to determine whether such untruths or inconsistencies are significant or inconsequential and whether to accept or reject all or to accept some and reject the balance of the testimony of any witness.

In evaluating the credibility of witnesses, you should take into account any evidence that the witness who has testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you're considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care. This is not to

suggest that any witness who has an interest in the outcome of the case would testify falsely. It is for you to decide what extent, if at all, the witness' interest has affected or colored his or her testimony.

You are not required to accept testimony even though the testimony is not contradicted and the witness' testimony is not challenged. You may decide, because of the witness' bearing, or demeanor, or because of the inherent improbability of the testimony, or for other reasons sufficient to yourselves, that the testimony is not worthy of belief. On the other hand, you may find, because of a witness' bearing and demeanor, and based upon consideration of all of the other evidence in the case, that the witness is truthful.

Thus, there is no magic formula by which you can evaluate this testimony. You bring to this courtroom all your experience and common sense. You determine for yourselves in many circumstances the reliability of statements that are made by others to you and upon which you are asked to rely and act. You may use the same tests here that you use in your everyday lives. You may consider the interest of any witness in the outcome of this case and any bias or prejudice of any such witness, and this is true regardless of who called or questioned the witness.

You have heard evidence that a witness made a statement on an earlier occasion which counsel argues is

inconsistent with the witness' trial testimony. Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence bearing on either defendant's guilt. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his trial testimony, you may consider that fact in deciding how much of his trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake, whether the inconsistency concerns an important fact or whether it had to do with a small detail, whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based on all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and, if so, how much, if any, weight to be given to the inconsistent statement in determining whether to believe all or part of the witness' testimony.

One of the defendants did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any evidence, because it is the government's burden to prove the defendant guilty beyond a

reasonable doubt. That burden remains with the government throughout the entire trial and never shifts to a defendant. A defendant is never required to prove that he is innocent. You may not attach any significance to the fact that the defendant did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. In addition, even if one defendant testifies, no adverse inference may be considered against the other defendant who did not testify. You may not consider this against the defendants in any way in your deliberations.

A defendant in a criminal case never -- as I said, never has any duty to testify or come forward with any evidence. This is because, as I told you, the burden of proof beyond a reasonable doubt remains on the government at all times, and the defendant is presumed innocent. In this case, however, a defendant did testify, and he was subject to cross-examination, like any other witness. You should, therefore, examine and evaluate the defendant's testimony just as you would the testimony of any other witness with an interest in the outcome of the case.

You have heard the testimony of law enforcement agents. The fact that a witness may be employed as a law enforcement official by the United States Government or by a foreign government does not mean that his or her testimony deserves any more or less considerations or greater or lesser

weight than that of an ordinary witness. At the same time, it is legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the ground that their testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all of the evidence, whether to accept the testimony of the law enforcement or government employee witness, as it is with every other type of witness, and to give that testimony the weight you find it deserves.

You've heard from witnesses who testified that they committed certain of the crimes charged in the indictment or other crimes. Some of these witnesses have testified under the terms of a cooperation agreement or a nonprosecution agreement. There's been a great deal said about these so-called cooperating witnesses in the summations of counsel and whether or not you should believe them. The law permits the use of testimony from such witnesses. Indeed, such testimony, if found truthful by you, may be sufficient in itself to warrant conviction if it convinces you of the defendant's guilt beyond a reasonable doubt. However, the law requires that the testimony and motives of such witnesses be scrutinized with particular care and caution.

After carefully scrutinizing the testimony of such a witness, you may give that testimony as little or as much

weight as you deem appropriate. Cooperating witness testimony should be given such weight as it deserves in light of the facts and circumstances before you, taking into account the witness' demeanor, candor, the strength and accuracy of the witness' recollection, the witness' background, the extent to which the testimony is or is not corroborated by other evidence in the case, and the witness' personal interest in testifying.

I've given you some general considerations on credibility, and I will not repeat them all here, nor will I repeat all of the arguments made on both sides. However, let me say a few things that you may want to consider during your deliberations on the subject of accomplices.

In evaluating the testimony of a cooperating witness, you should ask yourselves whether the witness would benefit more by lying or by telling the truth. Was the witness' testimony made up in any way because she believed or hoped that she would somehow receive favorable treatment by testifying falsely? Or did she believe that her interests would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one which would cause her to lie, or was it one which would cause her to tell the truth? Can this motivation color her testimony?

I used her there. It could be her or his.

As with any witness, if you find that the testimony

was false, you should reject it. However, if, after cautious and careful examination of the cooperating witness' testimony and demeanor upon the witness stand, you are satisfied that the witness told the truth, you should accept it as credible and give the testimony whatever consideration you think it deserves.

As with any witness, the issue of credibility need not be decided in an all-or-nothing fashion. Even if you find that a witness testified falsely in one part, you may still accept his or her testimony in other parts, or you may disregard all of it. This determination is entirely for you, the jury.

A defendant has called witnesses who have given their opinion of the defendant's character. This testimony is not to be taken by you as the witness' opinion as to whether the defendant is guilty or not guilty. That question is for you alone to determine. You should, however, consider this character evidence, together with all of the other facts and all of the other evidence in the case, in determining whether the defendant is guilty or not guilty of the charge. Character evidence may be considered by you in determining whether the government has proven the defendant's guilt beyond a reasonable doubt.

Accordingly, if, after considering all of the evidence, including testimony about the defendant's good character, you should find a reasonable doubt has been created,

you must acquit him of the charge.

On the other hand, if, after considering all of the evidence, including that of the defendant's character, you are satisfied beyond a reasonable doubt that the defendant is guilty, you should not acquit the defendant merely because you believe him to be a person of good character.

You may not draw any inferences, favorable or unfavorable, towards the government or the defendants, from the fact that certain persons were not tried as defendants in this case. The fact that these persons are not on trial here must play no part in your deliberations.

You have heard the names of several people during the course of the trial who did not appear here to testify, and one or more of the attorneys may have referred to their absence. You should not draw any inferences or reach any conclusions as to what these persons would have testified to had they been called. Their absence should not affect your judgment in any way.

Remember my instruction, however, that the law imposes no duty on the defendant in a criminal case to call any witnesses or produce any evidence.

You have heard evidence during the trial that witnesses have discussed facts of the case and their testimony with the government lawyers, the defense lawyers, or their own lawyers before the witnesses appeared in court.

Although you may consider that fact when you are evaluating a witness' credibility, I instruct you that there is nothing either unusual or inherently improper about a witness meeting with the government lawyers, the defense lawyers, or his or her own lawyers before testifying, so that the witness can be aware of the subjects he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultations.

Again, the weight you give to the fact or the nature of the witness preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

You've heard reference through the questioning to the fact that certain investigative techniques were used or not used by the government. There is no legal requirement, however, that the government must prove its case through any particular means. Your concern is to determine whether, on the evidence or lack of evidence, the defendants' guilt has been proven beyond a reasonable doubt.

Some of the evidence in this case has consisted of electronic communications seized from computers or electronic accounts. There is nothing illegal about the government's use

of such electronic communications in this case, and you may consider them along with all the other evidence in the case. Whether you approve or disapprove of the seizure of these communications may not enter your deliberations.

You may, therefore, regardless of any personal opinions, consider the evidence along with all the other evidence in the case in determining whether the government has proved beyond a reasonable doubt the guilt of the defendants. However, as with the other evidence, it is for you to determine what weight, if any, to give such evidence.

During the trial, you heard evidence about certain provisions of the Federal Credit Union Act, the National Credit Union Administration regulations, including those relating to field of membership, the duties and responsibilities of a credit union's board of directors, and reports that are submitted to the National Credit Union Administration. I instruct you that a violation of any of these laws or regulations, should you find any to have occurred, is not a crime in and of itself.

In other words, the defendants are not charged with criminal violations of the Federal Credit Union Act or the National Credit Union Administration regulations, and you cannot find either defendant guilty based solely upon a violation of the Federal Credit Union Act or the National Credit Union Administration regulations. You may, however,

consider any evidence about any violation of the Federal Credit Union Act or National Credit Union Administration regulations as you would any other evidence in the case.

You have heard testimony about evidence seized in connection with certain searches conducted by law enforcement officers. Evidence obtained from these searches was properly submitted in this case and may be properly considered by you. Such searches were appropriate law enforcement actions. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations because I instruct you that the government's use of the evidence is entirely lawful. You must, therefore, regardless of your personal opinions, give this evidence full consideration, along with all the other evidence in the case, in determining whether the government has proven each defendant's guilt beyond a reasonable doubt. As with all evidence, it is for you to determine what weight, if any, to give such evidence.

In connection with the recordings that were introduced into evidence during the trial, you were provided with transcripts of the conversations to assist you while listening to the recordings. I instructed you during the trial, and I remind you now, that the transcripts are not evidence. The transcripts were provided only as an aid to you in listening to the recordings. It is for you to decide whether the transcripts correctly present the conversations recorded on the

recordings that you heard. If you wish to hear any of the recordings again, or see any of the transcripts, they will be made available to you during your deliberations.

You have heard evidence in the forms of what are called stipulations. A stipulation of fact is an agreement among the parties that a certain fact is true. You must regard such agreed facts as true.

A stipulation of testimony is an agreement among the parties that, if called, a witness would have given certain testimony. You must accept as true the fact that the witnesses would have given the testimony. However, it is for you to determine the effect or weight to give that testimony.

Some of the exhibits presented in this case were charts, tables, or other forms of summary exhibits. These exhibits are not direct evidence. They are graphic representations or other ways of summarizing more voluminous information that was either described in the testimony of a witness or reflected in documents admitted into evidence.

It's often easier and more convenient to use charts, tables, and summaries as opposed to placing all of the underlying documents in front of you, but it is up to you to decide whether the summary exhibits fairly and correctly reflect the underlying testimony and documents they purport to summarize.

To the extent that the summary exhibits conform to

your understanding of the underlying evidence, you may accept them. To the extent they do not, you should set them aside and rely on the underlying evidence instead. But one way or the other, realize that the summary exhibits are not in and of themselves direct evidence.

Some of the exhibits admitted into evidence consist of excerpts of longer documents that were not admitted into evidence in their entirety. There's nothing unusual or improper about the use of such excerpts, and you are not to speculate from the use of such excerpts that any relevant portion of a document has been omitted.

Similarly, some of the exhibits admitted into evidence include redactions of certain information. Again, there's nothing unusual or improper about such redactions, and you are not to speculate from the use of such redactions that any relevant portion of a document has been removed.

The question of possible punishment of the defendants is of no concern to you, the members of the jury, and should not in any sense enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court.

Your function is to weigh the evidence in this case and determine whether or not the government has proved that the defendants are guilty beyond a reasonable doubt solely upon the basis of such evidence.

Ladies and gentlemen, you're about to go into the jury

room and begin your deliberations. The documentary evidence will be sent back with you. And what the parties have done is you'll be sent back with paper copies of all the exhibits. You'll also be sent back with a laptop that contains electronic copies of all of the exhibits, and the laptop contains nothing else. And you'll also be provided with a full exhibit list. Those will go back to you in the jury room.

There was one explanation, Ms. Choi, that you were going to give regarding access to the WhatsApp chats.

MS. CHOI: Yes, your Honor.

If we could have a moment just to -- I don't know if it would be okay to show it on the screen? Because it might be easier.

THE COURT: Let me get through the rest of the instruction, and then we'll get to it.

MS. CHOI: Okay.

THE COURT: But, as I say, all of the evidence that's been admitted will go back in paper form, as well as accessible electronically on a laptop.

If you want any of the testimony read to you, that can be arranged. Please remember that it's not always easy to locate what you might want, so be as specific as you probably can in requesting portions of the testimony that you might want.

Any such request will be made through a note, which

I'll explain in a moment.

Your first task as a jury will be to choose your foreperson. The foreperson has no greater voice or authority than any other juror, but it is the person who will communicate with the Court through written note when questions arise and to indicate when you have reached a verdict.

Upon reaching your verdict, the foreperson should simply write a note saying we have reached our verdict.

Your requests for testimony, in fact, any communication with the Court, should be made to me in writing, as I said, signed by your foreperson, and given to one of the marshals who will guard your deliberations.

I will respond to any questions or requests you have as promptly as possible, either in writing or by having you return to the courtroom, so I can speak with you in person. In any communication, please do not tell me or anyone else how the jury stands on the issue of the jury's verdict until after a unanimous verdict is reached.

For those of you who took notes during the course of the trial, you should not show your notes to or discuss your notes with any other juror during your deliberations.

(Continued on next page)

THE COURT: (Continuing) Any notes you've taken are to assist you and you alone. The fact that a particular juror has taken notes entitles the juror's views to no greater weight than those of any other juror.

Finally, your notes are not to substitute for your recollection of the evidence in this case. If you have any doubt as to any testimony, as I've said, you may request that the official trial transcript that has been made of these proceedings be read or otherwise provided to you.

The most important part of this case, Members of the Jury, is the part that you as jurors are now about to play as you deliberate on the issues of fact. It is for you, and you alone, to weigh the evidence in this case and to determine whether the government has proved beyond a reasonable doubt each of the essential elements of the crime with which each defendant is charged. If government has succeeded, your verdict should be guilty as to that defendant and that charge. If it has failed, your verdict should be not guilty as to that defendant and that charge.

You must base your verdict solely on the evidence or lack of evidence and these instructions as to the law, and you are obliged under your oath as jurors to follow the law as I have instructed you, whether you agree or disagree with the particular law in question.

Under your oath as jurors, you are not to be swayed by

sympathy. You should be guided solely by the evidence presented during the trial and the law as I gave it to you, without regard to the consequences of your decision. You've been chosen to try the issues of fact and reach a verdict on the basis of the evidence or lack of evidence. If you let sympathy interfere with your clear thinking, there is a risk you'll not arrive at a just verdict.

As you deliberate, please listen to the opinion of your fellow jurors, and ask for an opportunity to express your own views. Every juror should be heard. No one juror should hold center stage in the jury room and no one juror should control or monopolize the deliberations. If, after listening to your fellow jurors and if, after stating your own view, you become convinced that your view is wrong, do not hesitate because of stubbornness or pride to change your view. On the other hand, do not surrender your honest convictions and beliefs solely because of the opinions of your fellow jurors or because you are outnumbered.

Your final vote must reflect your conscientious belief as to how the issues should be decided. Thus, the verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. Your verdict must be unanimous.

If at any time you are divided, do not report how the vote stands; and if you have reached a verdict, do not report

what it is until you are asked in open court.

Finally, I say this not because I think it's necessary, but because it is the custom in this courthouse to say this. You should treat each other with courtesy and respect during your deliberations, and I know that you will.

In conclusion, ladies and gentlemen, I am sure that if you listen to the views of your fellow jurors, and if you apply your own common sense, you will deliberate fairly.

Members of the Jury, I do ask for your patience for a few minutes longer. It is necessary for me to spend a few moments with counsel and the reporter at the sidebar. I will ask you to remain patiently in the jury box, without speaking to each other, and we will return in just a moment to submit the case to you.

(Continued on next page)

(At the sidebar)

THE COURT: Any final objections based on my reading of the instructions?

MR. CREIZMAN: I have two -- actually one. This is just -- I was confused because your Honor had said that you return -- if they want testimony to return transcripts back and not read backs. So I mean -- so my thought is that maybe --

THE COURT: I'll just tell them.

MR. CREIZMAN: If you could clarify that, this way they don't --

THE COURT: Everybody agree with that?

MR. NOBLE: That's fine, Judge.

THE COURT: Anything else?

MS. SANTILLO: Your Honor, I just want to note that I made prior objections about the limiting instructions and what evidence could be considered post withdrawal, and that I'm not waiving those objections in terms of the legal arguments we've made in the past by accepting the charge.

THE COURT: Anything else?

MR. NOBLE: No, Judge.

MS. CHOI: Logistical issue. So all the hard copies are ready including the WhatsApp -- five minute delay -- we'll just send it in afterwards. It shouldn't be an issue because they can start with the paper documents that are all there. There's a hard drive issue, your Honor. We need five minutes.

That's it.

MR. KLINGEMAN: I have a request in terms of the WhatsApp demonstration and that be that whatever page from the WhatsApp that's going to be displayed to the jury be neutral.

MS. CHOI: Jen Wotherspoon. It doesn't matter to me. You guys want to take a look and pick one.

MR. KLINGEMAN: Sure.

(Continued on next page)

(In open court)

THE COURT: One quick clarifying remark. I indicated if there is any testimony that you want read back, I'm putting in quotes, if there's testimony that you want to see, I would say here but, in fact, what we'll do if you want testimony is to ask for specific testimony in a note by the foreperson. We will print the pages of the transcript and send that back. So it won't be an oral read back. If there's something that you request, it will be the written transcript sent back to you.

I believe we're about to get clarity, a quick demonstration, explanation as to how to access any of the WhatsApp calls.

Also my law clerk will hand out to each of you copies of the instruction as you go into the jury room. And I have the verdict form, final verdict form which will also go back with you with the instructions.

Ready?

MS. CHOI: So you'll be getting an electronic copy of all the government and defense exhibits. So, it will be on a folder on your laptop that you'll be getting. There is a log-in on the bottom left-hand side that will give you the password. Just don't log out otherwise it will take a while to get the user name put back in. Then when you go to that desktop there will be one folder for government exhibits and one folder for defense exhibits. It will be pretty

straightforward.

With regard to the government exhibits, were you to ask for a WhatsApp chat, we're going to show you what you would have to do in order to see the audio or see any of the images that are linked. We also have hard copies of those if you'd like to see them in paper form as well.

Mr. Chang-Frieden, if you could display for the screen what will be seen on theirs.

So you should just pick the government exhibit that you're looking at. We're going to do Jennifer Wotherspoon's WhatsApp. Find the Jennifer Wotherspoon HTML file. Take a right click on that. Although on your computer I think Chrome is the default so it should be fine. So it should be right click, open with, Google Chrome. It will only work in Google Chrome and not Microsoft Explorer. And then for you to play any of the audio you just have to click the triangle that appears in the box. So if you want to just click that. And it will play.

THE COURT: All right. Thank you.

That is all going back. A few final instructions. The first, as you know doubt realize, is that we have alternates, the twelve jurors, the first twelve jurors, jurors one through twelve, will deliberate.

Jurors 13, 14, 15, and 16 are alternate jurors who will not participate in the deliberations unless we call you

back to participate in the deliberations. So here's what that means. When I send you back to the jury room you'll, jurors 13, 14, 15, and 16, you'll gather your belongings -- I think your lunch is here which you can take with you -- and you'll say quick good-byes to your fellow jurors.

Ms. Nunez, will call you if we need you back or if you are finished with your responsibilities. That means until Ms. Nunez calls you, you're free to go about your lives and do as you need. But, all of my instructions continue to apply. That means no communications with each other or anyone else about the case. No gathering information through any means about the case. And continuing to keep an open mind. And just obviously as part of that when you do say good-bye to your fellow jurors please no communications with each other about your views as to the case.

You do remain, as you have been throughout this process, an absolutely necessary part for us to get to where we are and where we need to go to complete the case.

I, therefore, send you home at this point with the enormous thanks of the parties, the lawyers, and this Court. You have -- you've done your duty and I know, no doubt, will continue to do your duty well.

So, we will just in a moment send everyone back into the jury room with those instructions.

As to timing, I know that there is an open issue.

There's a juror who we're determining whether the weather means they don't -- we don't need to end early. Obviously deliberations can only happen with all twelve jurors in the room. So if this early -- this accommodation is necessary to make, we'll bring you back into the courtroom if you haven't completed your task at 4:40 and then I would dismiss you until Monday.

If it turns out that we learn that that accommodation doesn't need to be made, then I will leave it to the twelve jurors to send me a note when you would like to finish; that is to say, at five we're ready to go home if you haven't completed your deliberations or you could stay later if that's what you chose. So we would wait to hear from you back. But if the -- I know Ms. Nunez is working to determine with the one juror if this accommodation is needed; and if so, we'll make it if deliberations are not yet complete.

So with that, Members of the Jury, we'll send you back. Your lunch is there. As soon as it is just the twelve of you, you may begin your deliberations.

First we need the marshal to please come forward and be sworn in to safeguard the jurors' deliberations.

(Marshal sworn)

THE COURT: Counsel anything further before I send the jury back?

MR. KLINGEMAN: No, thank you.

MR. CREIZMAN: No, your Honor.

MR. NOBLE: No, Judge.

THE COURT: All right. We'll send them back.

(At 1:09 p.m., the jury retired to deliberate)

MS. CHOI: Your Honor, we just need a few more minutes with the electronic copy. We can send back the paper copies for now. I'm sure they're saying their good-byes. If we could have five to ten minutes, Mr. Chang-Frieden will complete this task and then we can send back the computer or we can send back the computer now and then ask for it back to load the rest of them.

THE COURT: No. No. Let's just do it all at once. I just want -- let me just get everybody's agreement that what is -- what you have -- everybody agrees what is going back?

MR. KLINGEMAN: Yes.

MR. CREIZMAN: Yes.

THE COURT: And Ms. Choi?

MS. CHOI: Okay.

THE COURT: Ms. Choi?

MS. CHOI: Yes.

THE COURT: I'll take that as a yes.

MS. CHOI: Yes.

THE COURT: We -- I invite everybody to go get lunch. I do need Ms. Nunez to be able to have everybody back -- know where you are, have everybody back in here should we get any

notes because we want to address those promptly. So either be in the courtroom or let Ms. Nunez know where you are in the courthouse so she can find you quickly.

Anybody have any matters they need me to address?

MR. KLINGEMAN: No.

THE COURT: All right. Let me say I'll take just this moment to thank counsel for their hard work and zealous advocacy throughout this process. I want to also thank -- I want to thank everyone for helping facilitate the process and a special thanks to the paralegals and other administrative staff who really aided the process and always grateful to see the government being willing to have the paralegals work as the defense needs them throughout their case and to do it in such a professional and generous way. So I do thank you. I thank everyone, all of the folks who put in no doubt tireless hours to make this process go. So thank you everyone.

We'll see you if we hear from the jury.

(Recess pending verdict)

(Continued on next page)

(In open court; jury not present)

THE COURT: As to the open issue, as to whether the juror who had indicated she needed to leave at 4:40, unless something got canceled, Ms. Nunez has been monitoring that question and there's no indication it's canceled. So my assumption is that she needs to leave at 4:40, and so my proposal is to retrieve the jury, bring them in, tell them that I understand someone needs to leave at 4:40, remind them of the instructions, and ask them to return Monday at 9:30, to resume their deliberations once everyone is present.

MS. CHOI: Your Honor, I just wanted to get clarity about -- I'm sure Ms. Nunez has been monitoring it, so it's pretty definitive that it was not canceled?

THE COURT: Since the juror is in there and there's nothing she can do, all we could do is what Ms. Nunez was able to check; and that indication is that it's not canceled. The only remaining possibility -- we have a note?

MS. CHOI: Or a note?

THE COURT: We have a note.

Oh, this is very helpful: "We would like to confirm that" -- they name the juror, Juror No. 9 -- "does not need to leave early today at 4:40 p.m. to pick up her daughter from school. Upon confirmation, we would request to be dismissed at 5:00 p.m. today, as we plan to continue our deliberations of the -- I can't make out a word -- "deliberations of the,"

something "into Monday, March 13th." Oh, it's "counts." "We plan to continue our deliberation of the counts into Monday, March 13th. Please enjoy your weekend."

MS. CHOI: They're very polite and on time. That is a very nice note.

THE COURT: Here's what I propose: The only additional step we could take is if the juror were able to check her messages. Let's think. We could send in a note, rather than bringing them out, send in a note just saying they should pause their deliberation, for Juror No. 9 to come check her messages, to make a final determination. Ms. Nunez could communicate to the juror what she knows, and then send them back in with the instruction to send out a note when they're ready. It's complicated.

MS. CHOI: Yes. I guess my only concern is that it's already 4:43, so it seems as though if they're going to leave at 5:00 anyways, I don't know if it makes that much of a difference, as it were. It seems like they're very inclined to come back on Monday. They have made up their minds to do that.

THE COURT: Since she knows what Ms. Nunez was looking at, I think, based on that, it's a fair assumption that she needs to do this childcare issue.

MS. CHOI: Right.

THE COURT: So let's just stick to the original plan -- I think that's a good suggestion -- and bring them back

and dismiss them till Monday. Everybody agree?

MR. CREIZMAN: Yes, your Honor.

MR. KLINGEMAN: Yes, your Honor.

THE COURT: We will mark this first note as Court Exhibit 3.

(Jury present)

THE COURT: Thank you so much, ladies and gentlemen of the jury. I received your note and was on the cusp of getting you. We have no additional information for the juror who had the time issue, so I think that means that she does need to leave now. And so, in light of that, I'm going to send you home.

All of the instructions that I've given you apply. Of course, you've begun your deliberations and you've discussed it with each other. For the weekend, I just ask for, as I'm sure you know, no discussions with each other or anyone else about the case, no research about the case through any means or any sources, and continue to keep an open mind as you continue your deliberations with your fellow jurors.

What I'll do is ask you to return at 9:30 for your deliberations on Monday. You won't be coming into the courtroom. You'll go straight into the jury room. My instruction is: Don't start deliberating until everyone is there. Once everyone is there, you are charged to continue your deliberations pursuant to all of the instructions that

you've received. There will be breakfast there for you when you arrive. Lunch will be brought in, to the extent you haven't completed your deliberations, and we will proceed as we did today.

Thank you so much, ladies and gentlemen.

JUROR: Thank you.

THE COURT: Have a good weekend.

(Jury not present)

THE COURT: Any matters to take up?

MR. KLINGEMAN: Just one, your Honor.

THE COURT: Go ahead.

MR. KLINGEMAN: I will be back here Monday, as we all will be. You may recall, pretrial I told the Court that I have an out-of-state commitment next week. I'm going to try to honor that partially but I have a very early flight back Monday morning. It's scheduled to get me into LaGuardia in time to get me to court. So I'll be here as soon as those travel arrangements work out. In the meantime, obviously, Ms. Santillo will be here full time in any event. And I've reviewed this with Mr. Gross, who's copasetic with what I plan to do. So I'm asking the Court for that same indulgence?

THE COURT: I'm copasetic.

MR. CREIZMAN: No objection.

THE COURT: Thank you.

To my copaseticness?

MR. CREIZMAN: To everything.

THE COURT: Thank you, Mr. Klingeman.

Anything else?

MS. CHOI: Not from the government, your Honor.

THE COURT: Have a good weekend. See you Monday.

COUNSEL: Thank you.

(Adjourned to March 13, 2017 at 9:30 a.m.)

* * *

GOVERNMENT EXHIBITS

Exhibit No. Received

1482-B, 1482-C, 1483-A,
1483-B, 1483-C, 1483-F,
1483-H, 1483-J, 1483-L,
1483-T, 1488, 1489-B, 1491-B,
1495, 1521, 1522-A, 1531,
1533-A, 1551, 1552, 1553,
1554, 1556, 1557, 1558, 1560,
1561, 1562, 1575, 1583,
1586-A, 1586-B, 1586-C,
1586-D, 1586-E, 1587, 1588-A,
1588-B, 1588-C, 1611-A,
1611-B, 1613, 1614, 1615,
1616-A, 1616-B, 1616-C,
1616-D, 1616-E, 1617, 1618-A,
1618-B, 1618-C, 1621, 1623-A,
1646-1668: trevongross@me.com
Emails, 1652-1, 1652-1-A,
1652-2, 1652-3, 1666,
1786-1817:
jmfreundt@hotmail.com Emails,
1793, 1860-2049:
Ylebedev@gmail.com Emails,
1912, 1913, 1933, 1938, 1939,
1940, 1947-A, 1947-B, 1949,
1950, 1958, 1959, 1962, 1970,

1972, 1995, 2016, 2019, 2020, 2021, 2022, 2024, 2027, 2029, 2047-1, 2050-2120: Ylebedev@hope-fcu.com Emails, 2061, 2073, 2089, 2104, 2108, 2109, 2110, 2143-2254: rhill@hope-fcu.com Emails, 2145, 2146, 2148, 2157, 2161, 2163, 2165, 2167, 2173, 2178-B, 2178-C, 2178-D, 2184, 2198, 2201, 2203, 2206, 2208, 2212-A, 2212-B, 2218, 2230-A, 2230-B, 2232, 2234, 2236, 2236-1A, 2236-1C, 2238, 2244, 3000: HOPE FCU Documents, 3000, 3500s: Kapcharge Documents, 3504, 3506, 3511, 3512, 3513, 3516, 3522, 3523, 3524-A, 3524-B, 3524-C, 3524-D, 3528, 3529-A, 3529-B, 3534, 3537, 3538, 3539-A & 3539-B, 3541, 3543, 3544, 3573-A, 3573-B, 3575-A, 3575-B, 3576-A, 3580, 3583-D, 3587-A, 3587-B, 3588, 3611,

3613, 3520, 3690, 3701, 3704,
3705, 3708, 3568-A, 3719,
3721, 3725, 3740, 4000s:
Stipulations, 4015, 5000-5180:
Anthony Murgio's Computer,
5002, 5003, 5007, 5009, 5011,
5017, 5041, 5069, 5083, 5095,
5102, 5102-Link, 5115, 5127,
5139, 5148, 5149, 5152, 5153,
5154, 5155, 5156, 5157, 5158,
5159, 5160

DEFENDANT EXHIBITS

Exhibit No.	Received
24	4157